

*Frances Mary Richardson
Currier.*

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Smith. (Sir R.) D E
**REPVBLICA
ANGLORVM.**

*The maner of Gouernement or
policie of the Realme of Eng-
land, compiled by the Honora-
ble man Thomas Smyth, Doctor of the
ciuil lawes, Knight, and principall
Secretarie vnto the two most worthe
Princes, King Edward the sixt,
and Queene Elizabeth.*

Seene and allowed.

AT LONDON,
Printed by **Henric** Middleton
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O conceale the graces
 inspired by God, or the
 giftes ingrafted by na-
 ture, or the vertues at-
 chiued vnto our selues
 by industrie, in all ages
 and of all wise men was
 accounted vnduetiful-
 nesse, vnkindnesse & impietie vnto that com-
 mon wealth, in the which, and vnto the which
 we are both bred and borne : but to suppressse
 the worthie works of any author, may iustly be
 iudged not only iniurie to the person, but euen
 enuie at the whole world. VWherefore chaun-
 cing vpon this short discourse compiled by the
 honorable knight sir Thomas Smyth, and con-
 sidering that the same could not but be a great
 light vnto the ignorant, & no lesse delight vn-
 to the learned in the lawes and policie of sun-
 drie regiments : I thought it part of my durie,
 aswel for reuiuing of the fame of so notable a
 man, as for the publike imparting of so pythie
 a treatise, to present the same vnto thy indiffe-
 rent and discrete iudgement : VWherein al-
 though the errors & rashnes of Scribes, appea-
 ring in the contrarietie & corruption of cop-
 pies,

To the Reader.

pies, happening both by the length of time
thens the first making, as also by the often tran-
scripting might iustly haue been mine excuse or
rather discourage: yet weying the authoritie
of the author together with the grauitie of the
matter, I made no doubt but that the reuerence
due vnto the one, & the recompence deserued
by the other would easily counteruail all faults
committed by a clarke & writer. And whereas
some termes or other matters may seme to dif-
fer from the vsual phrase of the cōmon lawes
of this realme: notwithstanding to him that will
consider that the profession of the maker was
principally in the ciuill lawes, and therefore not
to be expected as one excellent in both, & also
that the finishing of this worke was in Fraunce
farre from his librarie, and in an ambassad euen
in the midst of weightie affaires, it cannot
ought not without great ingratitude be disple-
sant or in any sort disliking. Wherefore (gentle
Reader) accept in good part my zeale and this
honorable mans trauaile: assuring thy self that
the same framed by an expert workemaister,
and forged of pure and excellent steell, will
not faile in prouing to be a right conueni-
ous instrument.

Yule.

REPVBLICA ANGLORVM.

*The maner of gouernement or
policie of the REALME of
ENGLANDE.*

Of the diuerſities of common
wealthes or gouernement.

CHAP. I.



They that haue written
heretofore of Common
wealthes, haue brought
them into three most ſim-
ple and ſpeciall kindes of
faſhions of gouernement.
The firſt where one alone
doth gouerne, is called of
the Greekes *Μοναρχια*, the ſecond, where the ſmaller
number, commonly called

Monarchia.

of them *Αριστοκρατια*, and the thirde where the multitude
doth rule *Δημοκρατια*. To rule, is vnderſtoode to haue the
higheſt and ſupreme authoritie of commaundement.
That part of member of the common wealth is ſaide to
rule which doth controule, correct, and direct all other
members of the common wealth. That part which doth
rule, define and commaund according to the forme of the
gouernement, is taken in euerie common wealth to be
juſt and laue: As a rule is alway to be vnderſtoode to
be ſtraight, and to which all woorkes be to be confor-
med,

*Aristocratia.
Democratia.*

med, and by it to be iudged : I doe not meane the Lesbians rule which is conformed to the stone : but the right rule whereby the Artificer and the Architect doe iudge the straightnesse of euerie mans worke, he to be reckoned to make his worke perfectest, who goeth nérest to the straightnesse.

What is iust or Lawe in euerie common wealth or gouernement.

CHAP. 2.

NOw it doth appeare, that it is profitable to euerie common wealth (as it is to euerie thing generally and particularly) to be kept in her most perfect estate. Then if that part which doth beare the rule , doe commaund that which is profitable to it, and the commaundement of that part which doeth rule on that soyt, is to be accepted in euerie common wealth respectiuelly to be iust (as we haue said before): it must néedes folloiw, that the definition which Thrasimachus did make, that to be iust which is the profite of the ruling and most strong part (if it be meant of the Citie as common wealth) is not so farre out of the way, (if it be ciuilly vnderstood) as Plato would make it. But as there is profitable and likelyhode of profite, so there is right and likelyhode of right. And aswell may the ruling and Soueraigne part commaund that which is not his profite, as the iust man may offend (notwithstanding his iust and true meaning) when he would amend that which is amisse, and helpe the common wealth, and doe good vnto it. For in asmuch as he attempteth to doe contrarie to the Lawe which is already put, he therefore by the lawe is iustly to be condemned, because his doing is contrarie to the lawe and the ordinance of that part which doth commaunde.

An.

An other diuision of common wealthes.

CHAP. 3.

BUT this matter yet taketh an other doubt : for of these manner of rulinges by one, by the fewer part, & by the multitude or greater number, they which haue more methodically & more distinctly and perfectly written vpon them, doe make a subdiuision : and diuiding eche into two, make the one good and iust, and the other euill and vniust: as, where one ruleth, the one they call a king or *Basileus*, the other *tyrannus*, a tyrant : where the few-er number, the one they name a gouerning of the best men *aristocracies* or *Remp. optimatum*, the other of the vsurping of a few Gentlemen, or a few of the richer & stronger sort *oligarchia*, or *Paucorum potestatem* : and where the multitude doth gouerne, the one they call a common wealth by the generall name *politeia*, or the rule of the people *democratia*, the other the rule or the vsurping of the popular or rascall and viler sort, because they be more in number *tyrannocratia* & *anarchia*.

Example of chaunges in the maner
of gouernment.

CHAP. 4.

IF common wealthes which haue had long continuance, the diuersities of times haue made all these manners of ruling or gouernemēt to be seene: As in Rome: kinges Romulus, Numa, Seruius : tyrantes, Tarquinius, Sylla, Cesar : the rule of best men, as in time when the first Consuls were : and the vsurping of a few, as of the Senatoꝝ after the death of Tarquinius, and befoze the succession of the Tribunate, and manifestly in the Decemvirate, but more perniciously in the Triumvirate of Cesar, Crassus, and Pompeius : and afterwarde in the Triumvirate of Octavius, Antonius, and Lepidus : The common wealth and rule of the people, as in the expul-

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ting

ting of the decemviri and long after, especially after the law was made, either by Horatius, or (as some would haue it) Hortentius, *quod plebs scinerit, id populum teneat*. And the ruling and vsurping of the popular and rascall, as a litle befoze Sylla his reigne, and a litle befoze Caius Cæsars reigne. For the vsurping of the rascality cā neuer long endure, but necessarily breedeth, & quickly bringeth forth a tyrant. Of this, hath Athens, Syracuse, Lacedemon and other old auncient ruling Cities had experience, and a man neede not doubt but that other common wealthes haue followed the same rate. For the nature of man is neuer to stand still in one maner of estate, but to grow from the lesse to the moze, and decay from the moze againe to the lesse, till it come to the fatall end and destruction, with many turnes and tymoxles of sickness & recovering, seldome standing in a perfect health, neither of a mans bodie it selfe, nor of the politike bodie which is compact of the same.

Of the question what is right and iust in cuerie common wealth.

CHAP. 5.

¶ When the common wealth is euill gouerned by an euill ruler and vniust (as in the thre last names which be rather a sickenesse of the politike bodie than perfect & good estates) if the lawes be made, as most like they be alwayes to maintaine that estate: the question remaineth whether the obedience of them be iust, and the disobedience wrong: the profit and conseruation of that estate right and iustice, or the dissolution: and whether a good and vpight man, and louer of his countrie ought to maintaine and obey them, or to seeke by all meanes to abolish them, which great & haucie courages haue often attempted: as Dion to rise vp against Dionysius, Thrasibulus against the xxx. tyrantes, Brutus and Cassius.

Cassius against Caesar, which hath bin cause of many commotions in common wealthes, wherof the iudgement of the common people is according to the event and successe: of them which be learned, according to the purpose of the doers, and the estate of the time then present. Certaine it is that it is alwayes a doubtfull and hazardous matter to meddle with the chaunging of the lawes and gouvernement, or to disobey the orders of the rule or government, which a man both finde already established.

That common wealthes or gouvernements
are not most commonly simple but mixt.

CHAP. 6.

NOW although the gouvernements of common wealthes be thus divided into three, and cutting ech into two, so into sixe, yet you must not take that ye shall finde any common wealth or gouvernement simple, pure and absolute in his sort and kinde, but as wise men haue divided for vnderstandings sake and fantasied iii. simple bodies which they call elementes, as fire, ayre, water, earth, and in a mans bodie foure complexions or temperatures, as cholericke, sanguine, phlegmaticque, and melancolique: not that ye shall finde the one vtterly perfect without mixture of the other, for that nature almost will not suffer, but vnderstanding both discerne ech nature as in his sinceritie: so seldome or neuer shall you finde common wealthes or gouvernement which is absolutely and sincerely made of any of them aboue named, but alwayes mixed with an other, and hath the name of that which is moze and ouerruleth the other alwayes or for the most part.

The definition of a king and of a tyrant.

CHAP. 7.

Where one person beareth the rule they define that to be the estate of a king, who by succession or election commeth with the good will of the people to that gouernement, and doth administer the common wealth by the lawes of the same and by equitie, and doth seeke the profit of the people as much as his owne. A tyrant they name him, who by force commeth to the Monarchie against the will of the people, breaketh lawes already made at his pleasure, maketh other without the aduise and consent of the people, and regardeth not the wealth of his communes but the advancement of him selfe, his faction, & kindred. These definitions do containe three differences: the obtaining of the authoritie, the manner of administration thereof, & the butte or marke whereunto it doth tend and shoote. So as one may be a tyrant by his entrie and getting of the gouernement, & a king in the administration thereof. As a man may thinke of Octavius, and peradventure of Sylla. For they both coming by tyranny and violence to that state, did seeme to trouble herie much for the better order of the common wealth, howbeit either of them after a diuerse maner. An other may be a king by entrie, & a tyrant by administration, as Nero, Domitian, and Commodus: for the empire came to them by succession, but their administration was utterly tyrannicall, of Nero after five yeares, of Domitian and Commodus very shortly vpon their new honour. Some both in the coming to their Empire, and in the butte which they shoot at, be kings, but the manner of their ruling is tyrannicall: as many Emperours after Caesar and Octavius, and many Popes of Rome. The Emperours claime this tyrannicall power by pretence of that Rogation or *plebiscitum*, which Caius Caesar or Octavius obtained, by which all the people

Reg.

Tyrannus.

ple of Rome did conferre their power & authoritie vnto Caesar wholly.

The Pope groundeth his from Christ (*cui omnis potestas data est in caelo & in terra*) whose successor he pretendeth to be: yet the generall Councils make a strife with him, to make the Popes power either *Aristocratie* or at the least *legitimum regnum*, & would faine bide that *absolutam potestatem*. Some men doe iudge the same of the kinges of Fraunce, and certaine Princes of Italie and other places, because they make & abrogate lawes and edictes, lay on tributs and impositions of their own will, or by the private Counsell and aduise of their friends and fauorites only, without the consent of the people. The people I call that which the word *populus* both signifie, the whole bodie and the three estates of the common wealth: and they blame Lewes the xi. for bringing the administration royall of Fraunce, from the lawfull and regulate raigne, to the absolute and tyrannicall power and gouernement. He himselfe was wont to gloze and say, he had brought the crowne of Fraunce hors de page, as one would say out of Wardship.

Of the absolute king.

CHAP. 8.

Other do call that kinde of administration which the Greekes do call *παρβασιλειαν*, not tyranny, but the absolute power of a king, which they would pretende that euery king hath, if he would vse the same. The other they call *βασιλειαν* or the Royall power regulate by lawes: of this I will not dispute at this time. But as such absolute administration in time of warre when all is in armes, and when lawes hold their peace because they cannot be heard, is most necessarie: so in time of peace, the same is verie dangerous, as well to him that both vse it, and much more to the people vpon whom

whom it is vsed : whereof the cause is the frailtie of mans nature, which (as Plato saith) cannot abide or beare long that absolute and vncontroled authoritie, without swelling into too much pride and insolencie. And therefore the Romanes did wisely, who would not suffer any man to keepe the Dictatorship aboue six monethes, because the Dictators (for that time) had this absolute power, which some Greekes named a lawfull tyrannie for a time. As I remember, Aristotle (who of all writers hath most absolutely & methodically treated of the diuision and natures of common wealthes) maketh this sort of gouernmēt to be one kind of kings. But all commeth to one effect: for at the first, all kings ruled absolutely, as they who were either the heades & most ancient of their families, deriued out of their own bodies, as Adam, Noa, Abraham, Iacob, Esau, reigning absolutely ouer their owne children and bondmen as reason was : or else in the rude world amongst barbarous & ignorant people, some one then whom God had endewed with singular wisdom to inuent thinges necessary for the nourishing and defence of the multitude, and to administer iustice did so farre excell other, that all the rest were but beastes in comparison of him, and for that excellencie willingly had this authoritie giuen him of the multitude, and of the Gentils when he was dead & almost when he was yet lyuing, was taken for a God, of others for a Prophet. Such among the Jewes were Moses, Iosua, & the other iudges, as Samuel, &c. Romulus & Numa amongst the Romanes, Lycurgus and Solon & diuerse other among the Greekes, Zamolxis among the Thracians, Mahomet among the Arabians : And this kinde of rule among the Greekes is called *tyrannis*, which of it selfe at the first was not a name odious: But because they who had such rule, at the first, did for the most part abuse the same, waxed insolent & proude, vniust, and not regarding the common wealth, committed

Dictatorship.

Tyrannis.

committed such actes as were horrible and odious, as killing me without cause, abusing their wives & daughters, taking and spoiling all mens goods at their pleasures, and were not shepherdes as they ought to be, but rather robbers and denourers of the people, wherof some were confeners of God, as Dionysius, other while they lyued like diuils, and would yet be adozed & accompted for Gods, as Caius Caligula and Domitian: that kind of administration and maner also, at the first not euill, hath taken the signification & definition of the vice of the abusers, so that now both in Greeke, Latine, and English a tyrant is counted he, who is an euill king, & who hath no regard to the wealth of his people, but seeketh onely to magnifie himselfe and his, and to satisfie his vicious and cruell appetite, without respect of God, of right or of the law: because that for the most part they who haue had that absolute power haue beene such.

Of the name king & thadministration of England.

CHAP. 9.

That which we call in one syllable king, in english the olde english men and the Saxons from whom our tongue is deriued to this day calleth in two syllabes cuning, which whether it commeth of cen or ken which betokeneth to know & vnderstand, or can, which betokeneth to be able or to haue power, I can not tell. The participle absolute of thone we vse yet, as when we say a cuning man, *Vir prudens aut sciens*: the verbe of thother as I can do this, *possum hoc facere*. By olde and auncient histories that I haue red, I do not vnderstand that our nation hath vied any other generall authoritie in this realme neither Aristocraticall, nor Democraticall, but onely the royall and kingly maiestie which at the first was diuided into many and sundrie kinges, ech abso-

C i

lutely

lutely reigning in his countrie, not vnder the subiectiō of other, till by fighting thone with thother, the ouercommēd alwayes falling to the augmentation of the vanquisher and ouercommer, at the last the realme of England grew into one Monarchie. Neither any one of those kinges, neither he who first had all, tooke any inuestiture at the hād of The mperour of Rome or of any other superiour or sovraine p̄ince, but helde of God to himselfe, and by his sword his people and crowne, acknowledging no p̄ince in earth his superiour, and so it is kept & holden at this day. Although king Iohn (by the rebellion of the nobilitie ayded with the daulphin of Fraunce his power) to appease the Pope who at that time possessing the consciences of his subiectes was the also his enemy and his most greuous torment (as some histories do write) did resigne the crowne to his legate Pandulphus, and tooke it againe from him as from the Pope by faith and homage, and a certaine tribute yearly. But that act being neither approued by his people, nor established by act of parliament, was forthwith and euer sithens taken for nothing, either to binde the king, his successors or subiectes.

What is a common wealth, and the

partes thereof.

CHAP. 10.

Respublica.

To be better understood hereafter, it is necessarie yet to make a third diuision of the common wealth by the partes thereof. A common wealth is called a societie or common doing of a multitude of free men collected together and vnited by common accoord & couenantes among themselves, for the conseruation of themselves aswell in peace as in warre. For properly an host of men is not called a common wealth but abusiuely, because they are collected but for a time and for a fact: which

done,

done, ech diuideth himselfe from others as they were before. And if one man had as some of the olde Romanes had (if it be true that is witten) v. thousande or x. thousande bondmen whom he ruled well, though they dwelled all in one citie, or were distributed into diuerse villages, yet that were no common wealth: for the bondman hath no communion with his master, the wealth of the Lord is onely sought for, and not the profit of the slave or bondman. For as they who wife of these things haue defined, a bondman or a slave is as it were (sauiug life and humane reason) but the instrument of his Lord, as the axe, the saw, the chesyll and gouge is of the charpenter. Truth it is the charpenter looketh diligently to saue, correct and amend all these: but it is for his owne profit, and in consideration of him selfe, not for the instrumentes sake. And as these be instruments of the carpenter, so the plow, the cart, the horse, ore or asse, be instrumentes of the husbandman: and though one husbandman had a great number of all those and looked well to them, it made no common wealth nor could not so be called. For the priuate wealth of the husbandman is onely regarded, and there is no mutuall societie or portion, no law or pleading betweene thone and thother. And (as he sayth) what reason hath the pot to say to the potter, why madest thou me thus? or why dost thou breake me after thou hast made me? even so is the bondman or slave which is bought for monie: for he is but a reasonable and lyuing instrument the possession of his Lord and master, reckoned among his goods, not otherwise admitted to the societie ciuill or common wealth, but is part of the possession and goods of his Lords. Wherefore except there be other orders and administrations amongst the Turkes, if the prince of the Turkes (as it is witten of him) doe repute all other his bondmen and slaves (him selfe and his sonnes, onely freemen) a man may doubt whether his

administration be to be accounted a common wealth
 or a kingdome, or rather to be reputed onely as one that
 hath vnder him an infinite number of slaues or bondme
 amōg whom there is no right, law nor common wealth
 compact, but onely the will of the Lord and segnior.
 Surely none of the olde Greekes would call this fa-
 shion of gouernment Remp. or ~~republicke~~ for the reasons
 which I haue declared before.

The first sort or beginning of an house
 or familie called *monopole*.

CHAP. II.

Then if this be a societie, and consisteth onely of free
 men, the least part thereof must be of two. The natu-
 ralest and first coniunction of two toward the making
 of a further societie of continuance is of the husband &
 of the wife after a diuerse sorte ech hauing care of the
 familie: the man to get, to trauaile abroad, to defende:
 the wife, to saue that which is gotten, to carrie at home
 to distribute that which cometh of the husbandes la-
 bor for the nurtriture of the children and family of them
 both, and to keepe all at home neat and cleane. So na-
 ture hath forged ech parte to his office, the man sterne,
 strong, bould, aduenterous, negligent of his betwixt, &
 spending. The woman weake, fearefull, faire, curious
 of her betwixt, and sauing. Either of them excelling o-
 ther in wit and wisdom to conduct those thinges
 which appertaine to their office, and therefore where
 their wisdom both excell, therein it is reason that ech
 should gouerne. And without this societie of man, and
 woman, the kinde of man coulde not long endure. And
 to this societie men are so naturally borne that the
 prince of all Philosophers in consideration of natures
 was not afraide to say that a man by nature is rather
 desirous to fellow him selfe to another and so to liue in
 couple,

couple, than to adherd himselſe with many. Although of all thinges or lyuing creatures a man doth ſhew him ſelſe moſt politique, yet can he not well liue without the ſocietie & fellowſhip ciuill. He that can liue alone ſaith Aristotle is either a wild beaſt in a mans likenes, or elle a god rather than a man. So in the houſe and familie is the firſt and moſt naturall (but priuate) apparance of one of the beſt kindes of a common wealth, that is called Aristocratia where a few & the beſt doe gouerne, and where not one alwaies: but ſometime and in ſome thing one, & ſometime and in ſome thing another doth beare the rule. Which to maintaine for his part God hath giuen to the man great wit, bigger ſtrength, and moze courage to compell the woman to obey by reaſon or force, and to the woman beſwtie, faire countenance, and ſweete wordes to make the man to obey her againe for loue. Thus ech obeyeth and commaundeth other, and they two togeather rule the houſe. The houſe I call here the man, the woman, their childzen, their ſeruauntes bonde and free, their cattell, their houſholde ſtuffe, and all other things, which are reckoned in their poſſeſſion, ſo long as all theſe remaine togeather in one, yet this cannot be called Aristocratia, but Metaphorice, for it is but an houſe, and a little ſparke reſembling as it were that gouernement.

Dormus ſeu
familia.

The firſt and naturall beginning of a kingdome in Greeke βασιλεια.

CHAP. 12.

But for ſo much as it is the nature of all thinges to encrease or decreaſe, this houſe thus encreasing & multiplying by generation, ſo that it cannot well be comprehended in one habitation, and the childzen waxing bigger, ſtronger, wiſer, and thereupon naturally deſirous to rule, the father and mother ſendeth them out
 in

Prouining or propagation is when a mā layeth a brāch of a Vine or Olier, or any other tree into the ground, so that it taketh roote of it selfe & may liue though it be cut then from the first roote or stock.

Pagus.

Oppidum.

Ciuitas.

in couples as it were by prouining or propagation. And the childe by mariage beginneth as it were to roote towards the making of a new stocke, and thereupon another house or familie. So by this propagation or prouining first of one, and then another, and so from one to another in space of time, of many howses was made a streate or village, of many streetes and villages ioyned together a citie or borough. And when many cities, boroughes and villages were by common and mutuall consent for their conseruatiō ruled by that one and first father of them all, it was called a nation or kingdome. And this seemeth the first and most natural beginning and source of cities, townes, nations, kingdomes, and of all ciuill societies. For so long as the great grandfather was aliue and able to rule, it was unnaturall for any of his sonnes or offsprint to stride with him for the superiortie, or to go about to gouerne or any wise to dishonour him, from whom he had receiued life and being. And therefore such a one doth beare the first and natural example of an absolute and perfect king. For he loued them as his owne childzen and nephewes, cared for them as members of his owne body, prouided for them as one hauing by long time more experience than any one or all of them. They againe honoured him as their father of whole bodie they came, obeyed him for his great wisdom and foresight, went to him in doubtfull cases as to an oracle of God, feared his curse and malediction as proceeding from Gods owne mouth. He againe blessed morture: for ech paine put upon them, he esteemed as laide vpon himselfe.

The first and naturall beginning of the rule of a few of the best men called in Greeke *Ariftopocras*

CHAP. 13.

But when that great grandfather was dead, the sonnes of him and brethren among themselves not hauing

hauing that reuerence to any, no2 confidence of wise-
 dome in any one of them, no2 that trust thone to tho-
 ther, betweene whome (as many times it fareth with
 bzethzen) some strifes and bzawlinges had befoze a-
 risen: To defende themselues yet from them which
 were walsh and strangers, necessarily agreed among
 themselues to consult in common, and to beare rule fo2
 a time in order, now one, now another: so that no one
 might beare alwaies the rule, no2 any one be neglected.
 And by this meanes if anie one sayled during his yeare
 o2 time by ignozaunce, the next (being either wiser of
 himselfe, o2 else by his bzothers erro2 & fault) amended
 it. And in the meane while, at diuerse and most times
 when bzgent necessitie did occurre, they consulted all
 those heads of families together within themselues,
 how to demeane and order their matters, best fo2 the
 conseruation of themselues, and ech of their families,
 generally and particularly. Thus a few being heades
 and the chiefe of their families, equall in birth and no-
 bilitie, and not much different in riches, gouerned their
 owne houses and the descendentes of them particular-
 ly, and consulted in common vpon publike causes, agree-
 ing also vpon certaine lawes and orders to be kept a-
 mongst them. So the best, chiefest and sagest did rule,
 and thother part had no cause to strue with them, no2
 had no cause no2 apparance to compare with anie of
 them, neither fo2 age no2 discretion, no2 fo2 riches o2 no-
 bilitie. The rulers sought ech to keepe and maintaine
 their posteritie, as their sonnes and nephewes, and
 such as shoulde succede them and carie their names
 when they were deade, and so render them being mo2-
 tall by nature immortall by their fame and successi-
 on of posteritie: hauing most earnest care to main-
 taine still this their consinage and common familie as-
 well against fo2raigne and barbarous nations, which
 were not of their progenie, tongue, o2 religion, as a-

gainst wilde and savage beasts. This seemeth the naturall source and beginning of image of that rule of the fewer number, which is called of the Greekes *Αριστοκρατία* and of the Latines *optimatum respublica*.

The first originall or beginning of the rule
of the multitude called *πολιτεία* or *δημοκρατία*.

CHAP. 14.

NOW as time bringeth an ende of all things, these
brethren being all dead, and their offspring encreasing daily to a great multitude, and the reuerence due to the old fathers in such and so great number of equals sayling by the reason of the death or dotting of the Elders: eche owing their merites of education apart to their fathers and grandfathers, and so many arising and such equalitie among them, it was not possible that they should be content to be governed by a few. For two things being such as for the which men in society and league do most strive, that is honour and profite, no man of free courage can be contented to be neglected therein, so that they were faine of necessitie to come to that, that the more part should beare the price alway in election of magistrates and rulers. So that either by course or by lot ech man in turne might be receaved to beare rule and haue his part of the honour, and (if any were) of the profit, which came by administration of the common wealth. For whosoever came of that old great grandfathers race, he accounted him selfe as good of birth as any other. For service to the comon wealth all of such a number had done it, as they coulde not be accounted few. And if a few would take vpon them to usurpe ouer the rest, the rest conspiring together would soone be master ouer them, and ruinate them wholly. Whereupon necessarily it came to passe that the common wealth must turne and alter as befoze from one to

to a few, so now from a few to many and the most part, ech of these yet willing to saue the politicke bodie, to conserue the authozitie of their nation, to defende themselves against all other, their strife being onely for empire and rule, and who shoulde doe best for the common wealth, wherof they would haue experience made by bearing office and being magistrates. This I take for the first and naturall beginning of the rule of the multitude which the Greekes called *Δημοκρατία*: the Latines some *Respublica* by the generall name, some *populi potestas*, some *censuræ potestas*, I cannot tell holwe latinely.

That the common wealth or policie must be according to the nature of the people.

CHAP. 15.

By this proesse and discourse it doth appeare that the mutations & changes of fashions of gouernement in common wealthes be naturall, & do not alwayes come of ambitioⁿ or malice: And that according to the nature of the people, so the commō wealth is to it fit & proper. And as all these iii. kindes of common wealthes are naturall, so when to ech partie or espee and kinde of the people that is applied which best agreeth like a garmēt to the bodie or shoe to the foote, then the bodie politique is in quiet, & findeth ease, pleasure and profit. But if a contrary forme be giuen to a contrary maner of people, as when the shoe is too litle or too great for the foote, it doth hurt and encomber the conuenient vse thereof, so the free people of nature tyrannized or ruled by one against their willes, were he neuer so good, either faile of corage and were seruile, or neuer rest untill they either destroye their king and them that would subdue them, or be destroyed themselves: And againe another sort there is which without being ruled by once p^rince but set at

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libertie

libertie cannot tell what they shoulde doe, but either through insolencie, pride, and idleness will fall to robbery and all mischief, and to scatter and dissolve themselves, or with foolish ambition and private strife consume one another and bring themselves to nothing. Of both these two we haue histories enough to beare witness, as the Greeks, Romans, Samnites, Danes, Vandals, and others. Yet must you not thinke, that all common wealthes, administrations and rulings began on this sort, by prouiding or propagation, as is before written, but many times after a great battle and long war the captaine who led a multitude of people, gathered peradventure of diuerse nations & languages, liking þ place which he hath by force conquered, tarrieth there, & begiuneth a common wealth after this maner, & for the most part a kingdome. As the Gothes & Lombardes in Italie, the Frenchmen in Gaule, the Saracens in Spaine and part of Fraunce, the Saxons in great Brittain, which is now called Englande: of which when that one and chiefe prince is dead, the nobler sort consult among themselves, and either choose an other head and king, or diuide it into more heads & rulers, so did the Lombards in Italie, and the Saxons in England, or take at the first a common rule & popular estate, as the Swissers did in their cantons & do yet at this day, or else admit the rule of a certaine setwe, excluding the multitude and communalitie, as the Paduans, Veronenses, and Venetians haue accustomed.

The diuision of the parts and persons of the common wealth.

CHAP. 16

TO make all thinges yet cleare before, as we shal go, there ariseth another diuision of the partes of the common wealth. For it is not enough to say that it consisteth

consisteth of a multitude of houses & families which make
 stretes & villages, & the multitude of the stretes & villa-
 ges make towne, and the multitude of towne the
 realme, & that freemen be considered only in this behalf,
 as subiects & citizes of the commonwealth, & not bondmen
 who can beare no rule nor iurisdiction ouer freemen, as
 they who be taken but as instruments & the goods and
 possessions of others. In which consideration also we
 do reiect women, as those whom nature hath made to
 keepe home and to nourish their familie and childzen,
 and not to medle with matters abzoade, nor to beare
 office in a citie or common wealth no moze than chil-
 dzen and infanten: except it be in such cases as the au-
 thoritie is annexed to the blood and progenie, as the
 crowne, a dutchie, or an erledome, for there the blood is
 respected, not the age nor y^e sere. Whereby an absolute
 Quene, an absolute Dutches or Countesse, those I call
 absolute, which haue the name, not by being married to
 a king, duke, or erle, but by being the true, right & next
 successors in the dignitie, and vpon whom by right of
 the blood that title is descended: These I say haue the
 same authoritie although they be women or childzen in
 that kingdome, dutchie or earledome, as they shoulde
 haue had if they had bin men of full age. For the right
 and honour of the blood, and the quietnes and suertie of
 the realme, is moze to be considered, than either the ten-
 der age as yet impotent to rule, or the sere not accus-
 tomed (otherwise) to intermeddle with publicke affaires,
 being by common intendment vnderstood, that such per-
 sonages neuer do lacke the counsell of such graue and
 discreete men as be able to supplie all other defectes.
 This (as I sayde) is not enough. But the diuision of
 these which be participant of the common wealth is
 one way of them that beare office, the other of them
 that beare none: the first are called magistrates, the se-
 cond priuate men. Another the like was among the

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Romanes

Romanes of *Patricij* & *plebei*, thone striving with thether a long time, the *patricij* many yeares excluding the *plebei* from bearing rule, untill at last all magistrates were made comon betweene the: yet was there another diuision of the Romanes into *senatores*, *equites*, and *plebs*: the Greekes had also *βασίλειος* & *Δημοκρατικῆς*. The French haue also at this day, les nobles & la populaire, oꝝ gentils homes & villaines: we in England diuide our men commonly into foure soztes, gentlemen, citizens and yeomen artificers, and labozers. Of gentlemen the first and chiefe are the king, the pꝛince, dukes, marquises, earles, vicountes, barrons, and these are called *lat. nobilitas* the nobility, and all these are called Lords and noblemen: next to these be knightes, esquiers and simple gentlemen.

Of the first part of gentlemen of englande called *Nobilitas maior*.

CHAP. 17.

Nobilitas maior.

Eldest sonnes of dukes are not earles by birth, but Lordes, and take their place about earles, and so are eldest sons in respect of barons.

Esquires of honour or Lordes.

Dukes, marquises, earles, vicountes, and barrons, either be created by the pꝛince oꝝ come to that honoꝝ by being the eldest sonnes, as highest & next in succession to their parentes. For the eldest of dukes sonnes during his fathers lyfe is called an earle, an earles sonne is called by the name of a vicount, oꝝ baron, oꝝ else according as the creation is. The creation I call the first donation and condition of the honour (given by the pꝛince, for good seruice done by him and aduancement that the pꝛince will bestowe vpon him) which with the title of that honour is commonly (but not alwayes) given to him and to his heires, males only: the rest of the sonnes of the nobilitie by the rigour of the lawe be but esquiers, yet in common speeche, all dukes and marquises sonnes, and the eldest sonne of an earle be called Lords. The which name commonly

ly doth agree to none of lower degree than barrons, excepting such onely, as be thereunto by some speciall office called. The barrony or degree of Lordes doth answere to the dignitie of the Senators of Rome, and the title of our nobilitie to their *patricij*: when *patricij* did betoken *senatores aut senatorum filios*. *Census senatorius* was in Rome, at diuerse times diuerse, and in Englande no man is created barron, excepte he may dispend of yearly reuenue, one thousand poundes or one thousand markes at the least. Vicountes, earles, marquises and dukes more according to the proportion of the degree and honour, but though by chance he or his sonne haue lesse, he keepeth his degree: but if they decay by excesse, and be not able to maintaine the honour (as *senatores Romani* were *amoti senatu*) so sometimes they are not admitted to the vpper house in the parliament, although they keepe the name of Lord still.

Of the second sort of gentlemē which may be called *Nobilitas minor*, & first of knights.

CHAP. 18.

NO man is a knight by succession, not the king or prince. And the name of prince in england ^{non iſtius} betokeneth the kinges eldest sonne or prince of wales: although the king himselfe, his eldest sonne, and all dukes be called by generall name princes. But as in Fraunce the kinges eldest sonne hath the title of the daulphine, and he or the next heire apparant to the crowne is monſire, so in Englande the kinges eldest sonne is called ^{non iſtius} the prince. Knights therefore be not borne but made, either before the battle to encourage them the more to aduenture their lines, or after the conflict, as aduancement for their hardiſſe and manhood already shewed: or out of the warre

for some great seruice done, or some good hope through the vertues which do appeare in them. And they are made either by the king himselſe, or by his comiſſion and royall authoritie, giuen for the ſame purpoſe, or by his liutenant in the warres, who hath his royall and abſolute power committed to him for that time. And that order ſeemeth to anſwere in part to that which the Romanes called *Equites Romanos*, differing in ſome pointes, and agreeing in other, as their common wealth and ours do differ and agree: for neuer in all pointes one common wealth doth agree with an other, no nor long time any one common wealth with it ſelfe. For al chaungeth continually to more or leſſe, and ſtill to diuerſe & diuerſe orders, as the diuerſity of times do preſent occaſion, and the mutabilitie of mens wittes doth inuent and aſſay new wayes, to reſorme and amende that wherein they do finde fault. *Equites Romani* were choſen *ex cenſu*, & is according to their ſubſtance and riches. So be knightes in England moſt commonly, according to the yearely reueneu of their landes being able to maintaine that eſtate: yet all they that had *Equeſtrem cenſum*, *non legebantur equites*. No more are all made knightes in Englande that may diſpende a knightes land or ſee, but they onely whom the king wil ſo honour. The number of *Equites* was vncertaine, and ſo it is of knightes, at the pleaſure of the prince. *Equites Romani* had *equum publicum*: The knightes of England haue not ſo, but finde their own hoſe themſelues in peace time, and moſt vſually in warres.

Cenſus equeſter was among the Romanes at diuerſe times of diuerſe valew: but in England whoſoever may diſpende of his free landes 40. l. ſterling of yearely reueneue by an olde law of Englande either at the coronatio of the king, or marriage of his daughter, or at the dubbing of the prince, knight, or ſome ſuch great occaſion, may be by the king compelled to take that

that order & honour, or to pay a fine, which many not so desirous of honour as of riches, had rather disburse. Some who for causes are not thought worthy of y^e hono^r and yet haue abilitie, neither be made knightes though they would, and yet pay the fine. El. l. sterling, at that time when this order began, maketh now Cr. l. of currant mony of Englande: as I haue moze at large declared in my booke of the diuersitie of standardes or the valo^r of monies.

When the Romanes did wytte *senatus populusque Romanus*, they seemed to make but two orders, that is of the Senate and of the people of Rome, and so in the name of people they contayned *equestes* and *plebem*: so when we in England do say the Lordes and the commons, the knights, esquires & other gentlemen, with citizens, burgeses & yeomen be accompted to make the commons. In ordaining of lawes the senate of Lordes of England is one house, where the Archbishops and Bishops also be, and the king or Queene for the time being as chiefe: the knightes and all the rest of the gentlemē, citizens and burgeses which be admitted to consult vpon the greatestt affaires of the Realme be in another house by themselves, and that is called the house of the commons, as we shal moze clearly describe whē we speake of the parliament. Whereupon this wo^rd knight is deriued, and whether it do betoken no moze but that which miles doth in latine, which is a souldier, might be moued as a question. The wo^rd souldier now seemeth rather to come of soule and paymēt, and moze to betoken a waged or hyred man to fight than otherwise, yet Caesar in his Commentaries called soldures in the tongue gallois, men who deuoted & swoze themselves in a certaine band or othe one to another and to the captaine, which order if the Almaines did follow, it may be that they who were not hyred but being of the nation, vppon their owne charges and for their ad-

Verè Lantz-
knechti, lan-
cearius: a
spearmen

anouncement, and by such common oth or band that did follow the warres, were (possibly) ^{not' i' the} called knightes or *militēs*, and now among the Almaines some are called lanceknights as souldiers of their band not hyed, although at this day they be for the most part hirelings. And peradventure it may be that they which were next about the prince as his garde or sernautes picked or chosen men out of the rest being called in the Almaine language, knighten, which is as much to say as seruantes: these men being found of good service, the word afterward was taken for an honor, and for him whom maketh profession of armes. Our language is so chaunged that I dare make no iudgement thereof. Now we call him knight in english that the french calleth cheualier, and the lataine *equeitem* or *equestris ordinis*.

Eques auras.
The making

of a knight.

And when any man is made a knight, he kneeling downe is stroken of the prince, with his sword naked vpon the backe or shoulde, the prince saying: sus or soischualier au nom de Dieu and (in times past) they added S. George, and at his arising the prince saith, anuncer. This is the manner of dubbing of knights at this present: and that terme dubbing was the olde terme in this point, and not creation. At the coronation of a king or queene, there be knightes of the bath made with long and more curious ceremonies: But howsoeuer one be dubbed or made a knight, his wife is by and by called a Ladie as well as a barons wife: he himselfe is not called Lord, but hath to his name in common appellation added this syllable, Sir, as if he before were named, Thomas, William, Iohn, or Richard, afterward he is alwayes called Sir Thomas, Sir William, Sir Iohn, Sir Richard, and that is the title which men give to knightes in England. This may suffice at this time, to declare the order of knight-hood, yet there is an other order of knightes in England which be called the knightes of the garter. King Edward

Sire quasi Senior.

Edward the third, after he had obtained many notable victories, King Iohn of Fraunce, King James of Scotland, being both prisoners in the tower of London at one time, and King Henric of Castell the bastard expelled out of his realme, and Don Petro restozed vnto it by the prince of Wales and Duke of Aquitaine called the blacke prince, inuented a societie of honour, and made a choise out of his owne realme and dominions, and all Ch�stendom: and the best and most excellent renowned persons in vertues and honour, he did adozne with that title to be knightes of his ozder, gaue them a garter decked with golde, pearle and pzecious stones, with the buckle of gold, to weare daily on the left legge onely, a kirtle, gowne, cloke, chaperon, collar, and other august and magnificall apparell both of stoffe and fashion exquisite & heroticall, to weare at high feastes, as to so high and princely an ozder was meete: of which ozder he and his successors Kinges and Queenes of England to be the seueraigns, and the rest by certaine statutes and lawes among themselves, be taken as brethren and fellows in that ozder, to the number of xxi. But because this is rather an oznament of the realme than any policie oz government therof, I leaue to speake any further of it.

Of Esquiers.

CHAP. 19.

Escuter oz esquier (which we call commonly squire) is a French word, and betokeneth *Scutigerum* oz *Armigerum*, and be all those which beare armes (as we call them) oz armozies (as they terme them in French) which to beare is a testimonie of the nobilitie oz race from whence they do come. These be taken for no distinct ozder of the common wealth, but do goe with the residue of the gentlemen: saue that (as I take it)

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they

they be those who beare armes, testimonies (as I haue saide) of their race, and therefore haue neither creation nor dubbing: or else they were at the first costerels or the bearers of the armes of Lordes or knightes, and by that had their name for a dignitie and honour giuen to distinguish them from a common souldier called in latine *Gregarius miles*.

Of Gentlemen.

CHAP. 20.

Gentlemen be those whom their blood and race doth make noble and knowne, *Eυγενεις* in Greeke, the Latines call them all *Nobiles*, as the French Nobles; *Eυγενεια* or *Nobilitas* in Latine is defined, honour or title giuen, for that the auncestors hath bin notable in riches or vertues, or (in fewer wordes) old riches or prizes remaining in one stock. Which if the successors do keepe and follow, they be *vere nobiles* and *Eυγενεις*: if they doe not yet the fame and wealth of their auncestors serue to couer the so long as it can, as a thing once gilted though it be copper within, till the gilt be worne away. This hath his reason, for the Etimologie of the name serueth the efficacie of the worde. *Gens* in Latine betokeneth the race and surname, so the Romaines had Cornelios, Sergios, Appios, Fabios, AEmilios, Pisones, Iulios, Brutos, Valerios, of which who were Agnati, and therefore kept the name, were also Gentiles: and remaining the memorie of the glozie of their progenitors fame, were gentlemen of that or that race. This matter made a great strife among the Romanes, when those which were *Novi homines* were more allowed, for their vertues new and newly shoven, than the olde smell of auncient race newly defaced by the cowardise and euill life of their nephewes and discendauntes could make the other to be. Thus the Cicerones, Catones, and Marij had

had much adoe with those auncients, and therefore said Iuuenalis:

Malo pater tibi sit Terſites, dummodo tu ſis
AEacidi ſimilis vulcaniaque arma capeſſas,
Quàm te Therſiti ſimilem producat Achilles.

But as other common wealthes were ſaine to doe, ſo muſt all princes neceſſarily followe, that is, where vertue is to honour it: and although vertue of auncient race be eaſier to be obtained, aſwell by the example of the progenitoꝝ, which encourageth, as alſo through habilitie of education and bꝛinging vp, which enableth, and the laſtly enraced loue of tenāts & neyboꝝs to ſuch noblemen and gentlemen, of whom they holde and by whom they doe dwell, which pricketh foꝝward to enſue in their fathers ſteps. So if all this doe faile (as it were great pitie it ſhould) yet ſuch is the nature of all humane things, and ſo the world is ſubſect to mutability, that it doth many times faile: but whe it doth, the prince and common wealth haue the ſame power that their pꝛedeceſſoꝝ had, and as the huſbandinā hath to plant a new tree where the olde fayleth, ſo hath the prince to honour vertue where he doth finde it, to make gentlemen, eſquiers, knights, barons, earles, marquiſes, & dukes, where he ſeeth vertue able to beare that honour oꝝ merits, and deſerues it, & ſo it hath alwayes bin uſed among vs. But oꝝdinarily the king doth onely make knights and create barons oꝝ higher degrees: foꝝ as foꝝ gentlemen, they be made good cheape in England. foꝝ whoſoeuer ſtudieth the lawes of the realme, who ſtudieth in the vniuerſities, who pꝛoſeſſeth liberall ſciences, and to be ſhozte, who can liue idly and without manuall labour, and will beare the poꝝt, charge and countenaynce of a gentleman, he ſhall be called maſter, foꝝ that is the title which men giue to eſquires and other gentlemen, and ſhall be taken foꝝ a gentleman: ſq. true it is with vs as is ſaide, *Tanti eris*

alijs quanti tibi feceris : (and if needs be) a king of Heraulds shall also giue him for mony, armes newly made and inuented , the title whereof shall pretende to haue beene found by the said Herauld in perusing and viewing of olde registers , where his auncestors in times past had bin recorded to beare the same : And if he wil do it moze truely and of better faith, he will write that for the merittes of that man, and certaine qualitties which he doth see in him, and for sundrie noble actes which he hath perfourmed, he by the authoritie which he hath as king of Herauldes & armes, giueth to him and his heires these and these armes , which being done I thinke he may be called a squire, for he bearethewer after those armes . Such men are called sometime in scoyne gentlemen of the first head.

VWhether the maner of England in making gentlemen so easily is to be allowed.

CHAP. 21.

A Man may make doubt & question whether this maner of making gentlemen is to be allowed or no , & for my part I am of that opinion y^t it is not amisse. For first the prince looketh nothing by it, as he should doe if it were as in Fraunce: for the peomen or husbandman is no moze subiect to taile or tare in Englands than the gentleman : no, in euery payment to the king the gentleman is moze charged, which he beareth the gladlier and dareth not gaineſaie for to save and keepe his honour and reputation. In any shew or matter or other particular charge of the towne where he is , he must open his purse wider and augment his portion aboue others , or else he doth diminish his reputation . As for their outward shew, a gentleman (if he wil be so accompted) must go like a gentleman, a peoman like a peoman, and a rascall like a rascall : and if he be called to the

the warres, he must and will (whatsoever it cost him) array himselfe and arme him according to the vocation which he pretendeth: he must shew also a moze manly courage & tokens of better education, higher stomacke and bountifuller liberallitie than others, and keepe a-boute him idle seruantes, who shall doe nothing but waite vpon him. So that no man hath hurt by it but he himselfe, who hereby perchance will beare a bigger saile than he is able to maintaine. For as touching the policie and gouernment of the common wealth, it is not those that haue to do with it, which will magnifie themselves, and goe in higher buskins than their estate will beare: but they which are to be appointed, are persons tryed and well knowen, as shall be declared hereafter.

Of Citizens and Burgessees.

CHAP. 22.

NExt to gentlemen, be appointed citizens and burgessees, such as not onely be free and receiued as officers within the cities, but also be of some substance to beare the charges. But these citizens and burgessees, be to serue the common wealth, in their cities & burrowes, or in corporate towne where they dwell. Generally in the sypyes they be of none account, saue onely in the common assembly of the realme to make lawes, which is called the Parliament. The auncient cities appoint iiii. and ech burrough ii. to haue voices in it; and to giue their consent or dissent in the name of the citie or burrough, for which they be appointed.

Of Yeomen.

CHAP. 23.

Those whom we call yeomen next vnto the nobilitie, knightes and squires, haue the greatest charge and

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doings in the common wealth, or rather are more fra-
nailed to serue in it than all the rest : as shall appeare
hereafter . I call him a yeoman whom our lawes doe
call *Legalem hominem*, a woꝛde familiar in wꝛittes and
enquestes, which is a freeman bozne English, and may
dispend of his owne free lande in yearly reuenuē to the
summe of xl. s. sterling : This maketh (if the last va-
lue were taken now to the propozition of monies) vi. l.
of our currant mony at this present . This sort of peo-
ple confesse themselves to be no gentlemen , but giue
the honour to al which be or take vpon them to be gen-
tlemen, and yet they haue a certaine preheminance and
more estimation than labozers and artificers, and com-
monly liue welthilie, keepe good houses , & do their busi-
nesse, & trauaile to acquire riches: these be (foꝛ the most
part) sermoꝛs vnto gentlemen, which with grasing, fre-
quenting of markettes , and keeping seruauntes not i-
dle as the gentleman doth, but such as get both their
owne living and parte of their maisters , by these
meanes doe come to such wealth , that they are able
and daily doe buy the landes of vnthriftie gentlemen,
and after setting their sonnes to the schole at the Uni-
uersities , to the lawe of the Realme, or otherwise lea-
uing them sufficient landes whereon they may liue
without labour , doe make their saide sonnes by those
meanes gentlemen. These be not called masters , foꝛ
that (as I saide) pertaineth to gentlemen onely : But
to their surnames, men adde goodman : as if the sur-
name be Luter , Finch , White , Browne , they are
called , goodman Luter , goodman White , goodman
Finch , goodman Browne , amongst their neighbours,
I meane not in matters of importance or in lawe. But
in matters of lawe and foꝛ distinction, if one were a
knight they would wꝛite him (foꝛ example sake) Sir
Iohn Finch knight, so if he be an esquier, Iohn Finch
esquier or gentleman, if he be no gentleman, Iohn
Finch,

Finch yeoman. For amongst the gentlemen they which claime no higher degree, and yet be to be exempted out of the number of the lowest sort thereof, be written esquires. So amongst the husbandmen labourers, lowest and rascall sort of the people such as be exempted out of the number of the rascallitie of the popular bee called and written yeomen, as in the degree next unto gentlemen. These are they which old Carot calleth *Aratores* and *optimos cives in Republica*: and such as of whom the writers of common wealthes praise to haue manie in it. Aristoteles namely reciteth *ἡδὴ μακροῦ ἀγῶνι*: these tende their owne businesse, come not to meddle in publike matters and iudgements but when they are called, and gladde when they are deliuered thereof, are obedient to the gentlemen and rulers, and in warre can abide trauaile and labour as men bled to it, yet wishing it soone at an ende that they might come home & liue of their owne. When they are forth they fight for their Lordes of whom they hold their landes, for their wiues and children, for their countrey and nation, for praise and honour, against they come home, and to haue the loue of their Lord and his children to be continued towarde them and their children, which haue aduentured their liues to and with him and his. These are they which in the old world gat that honour to Englande, not that either for witte, conduction, or for power they are or were euer to be compared to the gentlemen, but because they be so manie in number, so obedient at the Lordes call, so strong of bodie, so heard to endure paine, so couragious to aduenture with their Lord or Captaine going with, or before them, for else they be not harts nor neuer were, as making no profession of knowledge of warre. These were the good archers in times past, and the stable troupe of footemen that affaide all France, that would rather die all, than once abandon the knight or gentleman their Captaine,

who at those daies commonly was their Lorde, and whose tenantes they were, readie (besides perpetual shame) to be in danger of vndoing of them selues, & all theirs if they should shewe any signe of cowardise or abandon the Lorde, knight or Gentlemen of whom they helde their liuing. And this they haue amongst them from their forefathers tolde one to an other. The gentlemen of France and the yeoman of Englande are renowned, because in battle of horsemen France was many times too good for vs, as we againe alway for them on foote. And gentlemen for the most part be men at armes and horsemen, and yeomen commonlie on foote: howsoever it was, yet the gentlemen had alwaies the conduction of the yeomen, and as their captaines were either a foote or vppon a little nagge with them, and the Kinges of Englande in foughten battles remaining alwaies among the footemen, as the French Kinges amongst their horsemen. Each Prince therby, as a man may gesse, did shew where he thought his strength did consist. What a yeoman is I haue declared, but from whence the worde is deriued it is hard to say: it cannot be thought that yeomen should be said a young man, for commonly wee doe not call any a yeoman till he be married, and haue children, and as it were haue some authoritie among his neighbours. Yonker in lowe dutch betokeneth a meane gentleman or a gay fellowe. Possible our yeomen not heeing so bolde as to name themselves gentlemen, when they came home, were content when they had heard by frequentation with lowe dutchmen of some small gentleman (but yet that would be counted so) to be called amongst them, yonker man, the calling so in warren by mortgage or in sport thons an other, when they come home, yonker man, and so yeoman: which worde now significth among vs, a man well at ease and hauing honestie to liue, and yet not a gentleman: whatsoeuer

uer that woꝛde yonker man, yonks man, oꝛ yeoman
both moze oꝛ lesse signifie to the dutch men.

Of the fourth sort of men which
doe not rule.

CHAP. 24.

THe fourth sort oꝛ classe amongst vs, is of those
which the olde Romans called *capite censij proletarij*
oꝛ *opera*, day labourers, poze husbandmen, yea mar-
chantes oꝛ retailers which haue no free lande, copy-
holders, and all artificers, as Taylers, Shoemakers,
Carpenters, Wicke-makers, Wickle-layers, Masons, &c.
These haue no voice noꝛ authoritie in our common
wealth, and no account is made of them but onelie to
be ruled, not to rule other, and yet they be not altoge-
ther neglected. For in cities and corporate towne the
default of yeomen, enquests and Juries are impaneled
of such manner of people. And in villages they be com-
monly made Churchwardens, alecunners, and manie
times Constables, which office toucheth moze the com-
mon wealth, and at the first was not employed vppon
such lowe and base persons. Wherefoze generally to
speake of the common wealth, oꝛ policie of Englande,
it is gouerned, administred, & manured by thre sortes
of persons, the Prince, Monarch, and head gouerner,
which is called the king, oꝛ if the crowne fall to a wo-
man, the Quene absolute, as I haue heere tofoze saide:
In whose name and by whose authoritie all things are
administred. The gentlemen, which be diuided into
two partes, the Baronie oꝛ estate of Lozdes confey-
ning barons and all that bee aboute the degre of a ba-
ron, (as I haue declared befoze): and those which be
no Lozds, as knights, Esquires, and simply gentle-
men. The thirde and last sorte of persons is named
If the

the peomanrie: each of these hath his part and administration in indgements, corrections of defaultes, in election of offices, in appointing and collection of tributes and subsidies, or in making lawes, as shall appeare hereafter.

THE SECOND booke.

Of the Parliament and the authoritie thereof.

CHAP. I.



The most high and absolute power of the realme of Englande, consisteth in the Parliament. For as in warre where the king himselfe in person, the nobilitie, the rest of the gentilitie, and the peomanrie are, is þe force and power of Englande: so in peace & consultation where the Prince is to give life, and the last and highest commaundement, the Baronie for the nobilitie and higher, the knightes, esquires, gentlemen and commons for the lower part of the common wealth, the bishoppes for the clergie bee present to aduertise, consult and shew what is good and necessarie for the common wealth, and to consult together, and vpon mature deliberation euerie bill or lawe being thise reade and disputed vpon in either house, the

the other two partes first each a part, and after the Prince himselve in presence of both the parties doeth consent vnto and alloweth. That is the Princes and whole realmes dede: whereupon iustlie no man can complaine but must accomodate himselfe to finde it good and obey it.

That which is done by this consent is called firme, stable, and *sanctum*, and is taken for lawe. The Parliament abrogateth olde lawes, maketh newe, giveth orders for thinges past, and for thinges hereafter to be followed, changeth rightes, and possessions of private men, legitimateth bastards, establissheth formes of religion, altereth weightes and measures, giueth formes of succession to the crowne, defineth of doubtful rightes, whereof is no lawe alreadie made, appointeth subsidies, tailles, taxes, and impositions, giueth most free pardons and absolutions, restoreth in bloud and name as the highest court, condemneth or absolveth them whom the Prince will put to that triall: And to be short, all that euer the people of Rome might do either by *Centuriatis comitijs* or *tributis*, the same may be done by the parliament of Englande, which representeth that the power of the whole realme both the head and the bodie. For euerie Englishman is entered to bee there present, either in person or by procuration and attornies, of what prebeminence, state, dignitie, or qualitie soeuer he be, from the Prince (be he King or Quene) to the lowest person of Englande. And the consent of the Parliament is taken to be euerie mans consent.

Alias Tribu-
nitjs.

The forme of holding the parliament.

CHAP. 2.

The Prince sendeth forth his rescripts or writtes to every duke, marques, baron, and every other Lord
 ff 2 tempo-

tempozall or spirituall who hath voice in the parliament, to be at his great counsell of Parliament such a day, (the space from the date of the writ is commonly at the least fortye dayes): he sendeth also writtes to the Sherifes of euery shyre to admonish the whole shire to choose two knightes of the parliament in the name of the shyre, to heare and reason, and to giue their aduise and consent in the name of the shyre, and to be present at that day: likewise to euery citie and towne which of ancientie hath bin wont to finde burgesses of the parliament, so to make election that they might be present there at the first day of the parliament. The knightes of the shyre be chosen by all the gentlemen and peomen of the shyre, present at the day assigned for the election: the voice of any absent can be counted for none. Peomen I call here (as befoze) that may dispende at the least xl. s. of yearely rent of free lande of his owne. These meeting at one day, the two who haue the more of their voices be chosen knightes of the shire for that parliament: likewise by the pluralitie of the voyces of the citizens and burgesses be the burgesses elected. The first day of the parliament the Prince and all the Lordes in their robes of parliament do meete in the higher house, where after prayers made, they that be present are written, and they that be absent upon sickness or some other reasonable cause (which the prince will allowe) do constitute vnder their hande and seale some one of those who be present as their procurer or attorney to giue voice for them, so that by presence or attorney & proxy they be all there, all the princes and barrons & all archbishops and bishops, and (when abbots were) so many abbots as had voice in parliament. The place where the assembly is, is richly tapessed and hanged, a princely and royal thzone as appertaineth to a king. set in the middell of the higher place thereof. Next vnder the prince sitteth the Chancelloz, who is the voyce and

of the prince. On the one side of that house of chamber sitteth the archbishops and bishops, ech in his ranke: on the other side the dukes and barons. In the middell thereof vpon wollacks sitteth the Judges of the realme, the master of the routes, and the secretaries of estate. But these that sit on the wollacks haue no voice in the house, but onely sit there to aunswere their knowledg in the law, when they be asked if any doubt arise among the Lordes. The secretaries to aunswere of such letters of thinges passed in counsell whereof they haue the custodie and knowledg: and this is called the vpper house, whose consent and dissent is giuen by ech man seuerally and by himselfe, first for himselfe, and then seuerally for so many as he hath letters and pories, when it cometh to the question, saying onely content or not content, without further reasoning or replying. In this meane time the knights of the shires and burgesles of the parliament (for so they are called that haue voice in parliamēt, and are chosen as I haue said befoze, to the number betwixt iii. C. and iiii. C.) are called by such as it pleaseth the prince to appoint, into an other great house or chamber by name, to which they aunswere and declaring for what theye or towne they aunswere: then they are willed to chosse an able & discreete man to be as it were the mouth of them, all to speake for and in the name of them, and to present him to chosen by them to the prince: which done they comming al with him to a barre, which is at the nether end of the vpper house, there he first praiseth the prince, then maketh his excuse of vnabilitie, and prayeth the prince that he would command the commons to chosse another. The chancelloz in the princes name doth so much declare him able, as he bid declare himselfe vnable, and thanketh the commons for choosing so wise, discrete and eloquent a man, and willeth them to go and consult of lawes for the cōmon wealth. When the spea-

her maketh certaine requests to the pynce in the name of the commons, first that his maiestie would be content that they may vse and enioy all their liberties and priuiledges that the common heuse was wont to enioy. Secondly that they might franchely and freely laye their mindes in disputing of such matters as may come in question, and that without offence to his Maiestie. Thirdly that if any should chaunce of that lower house to offend or not to do or say as should become him, or if any should offend any of them being called to that his highnes court: That they theselues might (according to the ancient custome) haue the punishment of them. And fourthly, that if there came any doubt, whereupon they shal desire to haue thadvice or conference with his Maiestie or with any of the Lozdes, that they might doe it: All which he promiseth in the commons names that they shal not abuse, but haue such regarde as most faithfull, true and louing subiectes ought to haue to their pynce.

The Chaunceloz answereth in the pynces name, as apperteyneth. And this is all that is done for one day, & sometime two. Besides the Chaunceloz, there is one in the vpper house who is called Clarke of the Parliament, who readeth the bills. For all that commeth in consulation either in the vpper house or in the neather house, is put in writing first in paper, which being once read, he that will, riseth vp and speaketh with it or against it: and so one after another so long as they shall thinke good. That done they goe to an other, and so to an other bill. After it hath bin once or twise read, and doth appeare that it is somewhat liked as reasonable, with such amendmēt in wordes and peradventure some sentēces as by disputatiō seemeth to be amended. In the vpper house the Chaunceloz asketh if they will haue it engrossed, that is to say put into parchement: which done, and read the third time, and that elsomen

*I come in time only may come
if parant doth sincede or donne
he shall and haue it fall if but
he take in t hede of*

if any be disposed to object disputed againe among them, the Chaunceloꝝ asketh if they will goe to the question: and if they agree to goe to the question, then he sayth, here is such a lawe oꝝ act concerning such a matter, which hath bene thise read here in this house, are ye content that it be enacted oꝝ no? If the not contentes be moe, then the bill is dashed, that is to say the lawe is annihilated and goeth no further. If the contentes be the moze, then the Clarke writeth vnderneath: Soit baille aux commons. And so when they see time they send such bills as they haue approued by two oꝝ thre of those which doe sit on the woolsacks to the commons: who asking licence, and comming into the house, with due reuerence, sayth to the speaker: Master speaker my Lordes of the vpper house haue passed among them and thinke good, that there should be enacted by Parliament such an act, and such an act, and so readeth the titles of that act oꝝ actes. They pray you to consider of them, and shew them your aduise, which done they goe their way. They being gone and the doze againe shut, the speaker rehearseth to the house what they sayde. And if they be not busie disputing at that time in an oꝝther bill, he asketh them streightwaie if they will haue that bill oꝝ (if there be mo) one of them.

In like maner in the lower house the speaker sitting in a seate oꝝ chaire foꝝ that purpose somewhat higher, that he may see and be seene of them all, hath befoze him in a lower seate his Clarke, who readeth such bills as he first propounded in the lower house, oꝝ be sent down from the Lords. Foꝝ in that point, ech house hath equal authoritie, to propounde what they thinke meete, eiꝝther foꝝ thabrogating of some law made befoze, oꝝ foꝝ making of a newe. All bills be thise in thre diuerse dayes read and disputed vpon, befoze they come to the question. In the disputing is a meruelous good oꝝder vsed in the lower house. Be that standeth vpps bare.

beareheaded is vnderstanded that he will speake to the bill. If moe stande vppre, who that first is iudged to arise, is first harde, though the one do prayse the law, the other diswaide it, yet there is no altercation. For euerie man speaketh as to the speaker, not as one to an other, for that is against the order of the house. It is also taken against the order, to name him whom ye doe confute, but by circumlocution, as he that speaketh with the bill, or he that spake against the bill, and gaue this and this reason. And so with perpetuall Oration not with altercation, he goeth through till he do make an end. He that once hath spoken in a bill though he be confuted straight, that day may not replie, no though he would chaunge his opinion. So that to one bill in one day one may not in that house speake twice, for else one or two with altercation would spende all the time. The next day he may, but then also but once.

No reuiling or nipping wordes must be vsed. For then all the house will crie, it is against the order: and if any speake vnrerently or seditiously against the Prince or the priuie counsell, I haue seene them not onely interrupted, but it hath bene moued after to the house, and they haue sent them to the tower. So that in such a multitude, and in such diuersitie of mindes, and opinions, there is the greatest modestie and temperance of speech that can be vsed. Nevertheless with much doulce and gentle termes, they make their reasons as violent and as vehement the one against the other as they may ordinarily, except it bee for vrgent causes & hasting of time. At the afternone they keepe no parliament. The speaker hath no voice in the house, nor they will not suffer him to speake in any bill to moue or diswaide it. But when any bill is read, the speakers office is as briefe and as plainly as he may to declare the effect thereof to the house. If the commons doe assent to such billes as he sent to them first agreed

agreed vpon from the Lordes thus subscribed, Les commons out assentus, so if the Lordes doe agré to such billes as be first agréed vpon by the Commons, they sende them downe to the speaker thus subscribed, Les Seigneurs out assentus. If they cannot agré, the two houses (for euerie bill from whence soeuer it doth come is thise reade in each of the houses) if it be vnderstode that there is any sticking sometimes the Lordes to the Commons, sometime the Commons to the Lordes doe require that a certaine of each house may meete together, and so ech part to be enformed of others meaning, and this is alwaies graunted. After which meeting so; the most part not alwaies either parte agré to others billes.

In the upper house they giue their assent & dissent ech man seuerallie & by himselfe first for himselfe, and then for so manie as he hath p^{ro}rie. Whē the Chaunceler hath demanded of them whether they will goe to the question after the bill hath bene thise reade, they saying onely content or not content, without further reasoning or replying: and as the more number doeth agré, so it is agréed on, or dashed.

In the neather house none of them that is elected either Knight or Burges can giue his voice to an other nor his consent nor dissent by p^{ro}rie. The more parts of them that be present onely maketh the consent or dissent. After the bill hath bene twice reade, and then engrossed and effsones reade and disputed on ynough as is thought: the speaker asketh if they will goe to the question. And if they agré he holdeth the bill vp in his hande and sayeth, as many as will haue this bill goe forwarde, which is concerning such a matter, say yea. Then they which allowe the bill crie yea, and as many as wil not, say no: as the crie of yea or no is bigger, so the bill is allowed or dashed. If it be a doubt which crie is the bigger, they diuide the house, the speaker

her saying, as many as doe allowe the bill goe downe with the bill, and as many as do not sitte still. So they diuide themselves, and being so diuided they are num- bzed who make the more part, and so the bill doeth spæde. It chaunceth sometime that some part of the bil is allowed, some other part hath much contrariety and doubt made of it: and it is thought if it were amended it would goe forwarde. When they chuse certaine cō- mittees of them who haue spoken with the bil & against it to amende it, and bying it in againe so amended, as they amongst them shall thinke meete: and this is be- fore it is engrossed, yea & some time after. But y^e agree- ment of these committees is no p̄iudice to the house. For at the last question they will either accept it or dash it as it shall seeme good, notwithstanding y^e what- soeuer the committees haue done.

Thus no bill is an act of Parliament, or dinaunce, or edict of law, vntill both the houses senerallie haue a- græd vnto it, after the order aforesaide, no nor then neither. But the last day of that Parliament or session the Prince cometh in person in his Parliament robes, and sitteth in his state: all the vpper house sitteth about the Prince in their states and order in their robes. The speaker with all the common house cometh to the barre, and there after thankesgiuen first in the Lordes name by the Chaunceller &c. and in the commons name by the speaker to the Prince, for that hee hath so great care of the good gouernement of his people, and for cal- ling them together to aduise of such thinges as should be for the reformation, establisshing & ornamēt of the common wealth: the Chaunceller in y^e Princes name giueth thanks to the Lordes & cōmons for their paines and trauailes taken, which he saith the Prince will re- member and recompence when time and occasion shall serue, and y^e he for his part is ready to declare his plea- sure concerning their proceedings, whereby the same
may

may haue perfect life & accomplishment by his princelie authoritie, and so haue the whole consent of the Realme. When one reades the title of euerie act which hath passed at that session, but only in this fashion: An act concerning such a thing &c. It is marked there what the Prince doth allowe, and to such he sayth: Le roy or la royne le veult. And those be taken now as perfect lawes and ordinances of the Realme of Englande and none other, and as thortlie as may be put in print, except it be some priuate cause or lawe made for the benefit or preiudice of some priuate man, which the Romans were wont to call *privilegia*. These be onelie exemplified vnder the seale of the Parliament, and for the most part not printed. As to those which the Prince liketh not, he answereth, Le roy or la royne s'aduifera, & those be accounted vtterly dashed and of no effect.

This is the order and forme of the highest and most authentick court of Englande, by vertue whereof all those things be established whereof I spake before, and no other meanes accounted vailable to make any new forfeiture of life, member, or landes of any English man, where there was no lawe ordained for it before. Nowe let vs speake of the saide partes when they be seuerall.

Of the Monarch King or Queene of Englande.

CHAP. 3.

The Prince whom I nowe call (as I haue often before) the Monarch of Englande, King or Quene, hath absolutelie in his power the authoritie of warre and peace, to desie what Prince it shall please him, and to bid him warre, and againe to reconcile himselfe and enter into leaguer or truce with him at his pleasure or

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the aduice onely of his priuie counsell. His priuie counsell be chosen also at the Princes pleasure out of the nobilitie of baronis, and of the knightes, and Esquiers, such and so many as he shall thinke good, who doth consult daily, or when neede is of the weightie matters of the Realme, to giue therein to their Prince the best aduice they can. The Prince doth participate to them all, or so many of them, as he shall thinke good, such legations and messages as come from forren Princes, such letters or occurrentes as be sent to himselfe or to his secretaries, and keepeth so many ambassades and letters sent vnto him secret as he will, although these haue a particular oth of a counseller touching faith and secrets administered vnto them when they be first admitted into that companie. So that here in the kingdome of Englande is farre moze absolute than either the dukedome of Venice is, or the kingdome of the Lacedemonians was. In warre time, & in the field the Prince hath also absolute power, so that his worde is a law, he may put to death, or to other bodilie punishment, whom he shall thinke so to deserue, without processe of lawe or forme of iudgement. This hath bene sometime vsed within the Realme befoze any open warre in sodden insurrections and rebellions, but that not allowed of wise and grate men, who in that their iudgement had consideration of the consequence and example, asmuch as of the present necessitie, especiallie, when by anie meanes the punishment might haue bene done by order of lawe. This absolute power is called marciall lawe and ever was and necessarilie must be vsed in all rampes and hostes of men, where the time nor place do suffer the tariance of pleading and processe, be it neuer so short, and the important necessitie requireth speedie execution, that with moze aue the souldier might be kept in moze straight obedience, without which neuer captaine can doe anie thing baileable in the warres.

The

The p^rince vseth also absolute power in crying and decreting the mony of the realme by his p^roclamation onely. The mony is alwayes stamped with the p^rinces image and title. The forme, fashon, maner, weight, finenesse, and basenesse thereof, is at the discretion of the p^rince. For whom should the people trust more in that matter than their p^rince, seeing the coine is only to certifye the goodnes of the mettall and the weight, which is affirmed by the p^rinces image and marke? But if the p^rince will deceaue them and giue them copper for silver or golde, or enhaunce his coyne more than it is worth, he is deceaued himselfe, as well as he doth go about to deceaue his subiectes. For in the same sorte they pay the p^rince his rentes and customes. And in time they will make him pay rateably or more for meate, drinke and victualles for him and his, and for their labour: which experience doth teach vs now in our dayes to be done in all regions. For there euer hath bene, & euer wil be a certaine proportion betwene the scarcy and plentie of other thinges, with gold and silver, as I haue declared more at large in my booke of monie. For all other measures and weightes, as well of drie thinges as of wet, they haue accustomed to be established or altered by the Parliament, and not by the p^rinces p^roclamation only.

The p^rince vseth also to dispence with lawes made, whereas equitie requireth a moderation to be had, and with paynes for transgression of lawes, where the payne of the lawe is applyed onely to the p^rince. But where the forfaiture (as in popular actions it chaunceth many times) is part to the p^rince, the other part to the declarator, detector or informer, there the p^rince doth dispence for his owne part onely. Where the criminall action is intended by inquisition (that maner is called with vs at the p^rinces suite) the p^rince giueth absolution or pardon: yet with a clause, *modo &c*

rectus in curia, that is to say, that no man obiect against the offendor. Whereby notwithstanding that he hath the princes pardon if the person offended will take upon him the accusation (which in our language is called the appeale) in cases where it lieth, the princes pardon doth not serue the offendor.

The prince giueth all the chiefe and highest offices or magistracies of the realme, be it of iudgement or dignitie, tempoꝝall or spirituall, and hath the tenthes and first fruites of all Ecclesiasticall promotions, except in the Uniuersities and certaine Colledges which be exempt.

All iustices, executions and commandementes be done in the princes name. We doe say in England the life and member of the kinges subiectes are the kinges onely, that is to say no man hath hault nor moyenne iustice but the king, nor can hold plea thereof. And therefore all those pleas, which touche the life or the mutilation of man, be called pleas of the crowne, nor can be done in the name of any inferiour person than he or she that holdeth the crowne of Englande. And likewise no man can giue pardon thereof but the prince onely: Although in times past there were certaine countie Palatines, as Chester, Durham, Glouc, which were hault iusticers, and iustices went in their name, and also some Lordes marchers of Wales, which claymed like priuiledge. All these are now woꝝne away. The supreme iustice is done in the kinges name, and by his authoritie onely.

The Prince hath the wardshippe and first marriage of all those that hold landes of him in chiefe. And also the gouernement of all fooles naturall, or such as be made by aduenture of sicknes, and so continue, if they be landed. This being once graunted by act of Parliament (although some inconuenience hath bene thought to grow thereof, & sith that time it hath bene thought
very

berie vnreasonable) yet once annexed to the crowne who ought to go about to take the clubbe out of Hercules hand. And being gouerned iustly & rightly, I see not so much inconuenience in it, as some men would make of it: diuerse other rights and p̄eminences the p̄ince hath which be called p̄erogatiues royales, or the p̄erogatiue of the king, which be declared particularly in the booke of the common lawes of England.

To be shor̄t the p̄ince is the life, the head, and the authoritie of all thinges that be done in the realme of England. And to no p̄ince is done more honoꝛ and reuerence than to the King and Queene of Englande; no man speaketh to the p̄ince noꝛ serueth at the table but in adozation and kneeling, all persons of the realme be bareheaded befoꝛe him: insomuch that in the chamber of p̄esence where the cloath of estate is set, no man dare walke, yea though the p̄ince be not there, no man dare tarrie there but bareheaded. This is vnderstood of the subiectes of the realme: foz all strangers be suffered there and in all places to vse the maner of their countrie, such is the ciuilitie of our nation.

The chiefe pointes wherein one common wealth doth differ from an other.

CHAP. 4.

NOW that we haue spoken of the parliament (which is the whole vniuersall and generall consent and authoritie aswell of the p̄ince as of the nobilitie and commons, that is to say, of the whole head and bodie of the realme of England) and also of the p̄ince, (which is the head, life and gouernoꝛ of this common wealth): there remaineth to shewe, how this head doth distribute his authoritie and power to the rest of the members foz the gouernment of his realme, and the common wealth of the politique bodie of England. And where-
as

as all common wealthes and governmentes be most occupied, and be most diuerse in the fashon of fine thinges: in making of lawes and ordinaunces, for their owne gouernment: in making of battell & peace, or truce with foraine nations: in prouiding of mony for the maintenance of themselves within themselves, & defence of themselves against their enemies: in choosing and election of the chiefe officers and magistrates: and fiftly in the administration of iustice. The first and thirde we haue shewed is done by the prince in parliament. The seconde and fourth by the prince himselfe. The fift remaineth to be declared.

Of the three maners and formes of trialles or iudgementes in England.

CHAP. 5.

By order and vsage of Englande there is three wayes and maners, whereby absolute and definite iudgement is giuen, by parliament which is the highest and most absolute, by battle, and by the great assise.

Triall or iudgement by parliament.

CHAP. 6.

The matter of giuing iudgement by parliament betweene priuate and priuate man, or betweene the prince and any priuate man, be it in matters criminall or ciuill, for land or for heritage, both not differ from thorder, which I haue prescribed, but it proceedeth by bill thysse read in ech house and assented to as I haue saide before, and at the last day confirmed and allowed by the prince. Notwithstanding such bills be feeldome receaued, because that great counsell being enough occupied with the publique affaires of the realme, will not gladly intermeddle it selfe with priuate quarrels & questions.

Triall

Triall of iudgement by battle.

CHAP. 7.

This is at this present not much bled, partly because of long time the Pope and the cleargie to whom in times past we were much subiect, alwayes cryed against it as a thing damnable and vnlawful, and partly because in all common wealthes (as to the tongue) so to the maners, fashions, habites, yea and kindes of trials and iudgements, and to all other thinges that is therein bled, time and space of yeaes bringeth a chaunge. But I could not yet learne that it was euer abrogated. So that it remaineth in force, whensoever it be demanded. The maner of it is described in Briton.

The triall by assise or xij. men, & first of the three partes which be necessary in iudgement.

CHAP. 8.

The two first iudgements be absolute supzeme and without appeale, and so is also the iudgement by the great assise. And because our manner of iudgements in England is in many thinges different from the fashion bled either in Fraunce, or in Italie, or in any other place where the Emperors lawes and constitutions (called the ciuill lawes) be put in vse, it will be necessarie here to make a litle digression, to the intent, that that which shalbe said hereafter may be better vnderstood. All pursuites and actions (we call them in our English tongue pleas) and in barbarous (but now vsuall) latine *placita*, taking that name *abusive* of the definitiue sentence, which may well be called *placitum* or *actio*. The French vseth the same calling in their language, the sentence of their iudges areste or arest; in which wordes notwithstanding after their custome they do not sounde the s. but we call *placitum* the action

is

not

not the sentence, and *placitare* barbarouslie, o2 to pleade in english, *agere* o2 *litigare*. Now in all iudgements necessarily being two parties, the first we call the impleader, suiter, demaunder o2 demaundaunt and plaintiffe: In criminall causes if he p2ofesse to be an accuser, we call him appelliant o2 appellour, and so accusation we call appeale. The other we call the defendant and in criminall causes p2isoner, for he cannot aunswere in causes criminall befoze he do render himselfe o2 be rendered p2isoner.

Index is of vs called Judge, but our fashion is so disorderle that they which giue the deadly stroke, and either condemne o2 acquite the man for guiltie o2 not guiltie, are not called Judges but the xii. men. And the same order aswell is in ciuill matters and pecuniarie, as in matters criminall.

Of pleas or actions.

CHAP. 9.

PLEAS o2 actions criminall be in English called pleas of the crowne, which be all those which tende to take away a mans life o2 any me2ber of him, for his euill deserving against the p2ince and common wealth.

And this name is given not without a cause. For taking this for a p2inciple that the life and member of an Englishman is in the power onely of the p2ince and his lawes, when any of his subiectes is spoiled either of life o2 member, the p2ince is endamaged thereby, and hath good cause to aske accompt, how his subiectes shoulde come to that mischiefe. And againe for so much as the p2ince who gouerneth the scepter, and holdeth the crowne of Englande hath this in his care and charge, to see the realme well gouerned, the life, members and possessions of his subiectes kept in peace and assurance: he that by violence shall attempt to b2eake that

that peate and assurance, hath forfeited against the
 scepter and crowne of England: and therfore not with-
 out a cause in all inquisitions and inditeementes, if any
 be found by the xii. men to haue offended in that be-
 halfe, straight the p[ri]nce is saide to be partie, and he
 that shall speake for the p[ri]soner shall be rebuked, as
 speaking against the p[ri]nce. Nevertheless it is neuer
 defended, but the p[ri]soner and partie defendant in any
 cause may alleadge for him, al the reasons, meanes and
 defenses that he can, and shall be peaceablie hearde and
 quietlie: But in those pleas & pursuites of the crowne,
 p[ro]curer or aduocate he gettes none, which in ciuill and
 pecuniarie matters (be it for land, rent, right, or pos-
 session, although he plead against the p[ri]nce himselfe)
 is neuer denied.

Sauing in ap-
 pels and vpon
 a speciall plea.

Pleas ciuill be either personall or reall, personall as
 contractes or for iniuries: reall be either possessorie to
 aske, or to keepe the possession, or in rem, which we cal
 a writte of right. For that which in the ciuill lawe is
 called *actio* or *formula*, we call writ in English: so the
 Greekes called it *word* for *word*, and in our bar-
 barous latine we name it *breue*.

Actio is the
 parties whole
 suite. *breue* is
 the kings pre-
 cept.

And as the olde Romanes had their actions some *ex
 iure civili*, and some *ex iure pratorio*, and ordinarily *pra-
 tor dabat actiones & formulas actionum*: so in Englande
 we retaine still this, and haue some writtes out of the
 channerie, other out of the common place or the kinges
 bench.

Of the chiefe Tribunals, benches or courtes of England.

CHAP. 10.

At times past (as may appeare to him that shall with
 iudgement reade the histories and antiquities of
 England) the courtes and benches followed the king
 and

¶ ii

and his court wheresoever he went, especially shortly after the conquest. Which thing being found very cumbersome, painefull and chargeable to the people, it was agreed by parliament, that there shoulde be a standing place where iudgement shoulde be given. And it hath long time bene used in Westminster hall, which king William Rufus builded for the hall of his owne house. In that hal be ordinarily seene 3. Tribunals of Judges sentes. At the entrie on the right hande, the common place, where civill matters are to be pleaded, specially such as touch landes or contractes. At the upper end of the hall, on the right hand, the kinges bench, where pleas of the crowne haue their place. And on the left hand sitteth the Chauncelo accompanied with the master of the Roules, who in latine may be called *custos archinorum regis*, and certaine men learned in the civill lawe called Masters of the chauncerie, in latine they may be named *Assessores*.

Of the times of pleading called termes, & of the Chauncelor and chauncerie.

CHAP. II.

Two things may be moved in question here, how all Englande (being so long and so large, and having so many wythes and prouinces therein) can be answered of iustice in one place, and in 3. benches be they neuer so great? An other (whereas the kinges bench is exercised in criminall causes and in all pleas of the crowne, and the common place in all civill causes, reall and personall) what place then hath the chauncerie?

The first question will seeme moze marvelous and haue moze occasion of doubt, when I shall also tell that the lawe is not open at all times, no not the third part of the yeare. But where all other cities and common wealthes

wealthes had all the yeare pleas, suites, and iudgements, except for certaine holy daies and haruest and vintage, or when for some bygent cause the lawe was commaunded to be stopped, which is called *Iussum*; Contrarie in ours, it is but selue times open. What is onely foure times in the yeare which they call termes. After Michaelmas about ten daies, during five or sixe weekes at the least. After Christmas about a moneth, enduring by the space of thre weekes. Then from xviij dayes after Easter by the space of thre weekes & odde dayes. Likewise from the first or seuenth day after Trinitie Sunday, during two weekes and odde daies. All the rest of the yeare there is no pleading, entring nor pursuing of actions. This small time, and all that but in one place may seme verie iniurious to the people, who must be faine to suffer much wrong for lacke of Justice and of place and time to pleade: but unto that hereafter I entende to answer more fully, and in the meane while that shall suffice which the wise Cato answered to one who moued that the pleading place in Rome might be covered ouer with canuas as their theaters were, to the intent that the plaintifes and defendantes that were there might plead their matters more at ease, and not be in so much danger of their health by the heate of the sunne striking full and open vpon their heades, which was no smal grieue and disease, specially at Rome. Pay (saith Cato) for my part I had rather with that all the waies to the place of pleading were cast ouer with galthrops that the feete of such as loue so well pleading, should feele so much paine of those prickes in going thither as their heades doe of the sunne in tarrying there: he ment that they were but idle, whot heades, huste bodie, and trouble-some men in the common wealth that did so nourish pleading: good labourers and quiet men could bee content to ende their matters at home by iudgement of

their neighbours and kinnsfolke without spending to their money vpon procurers and aduocates whom we call attornies, counsellors, Sergeants, and generallie men of lawe. Those be accounted profitable citizens, who attende their honest labour and businesse at home, and not stande waiting and gaping vpon their rolles and proesse in the lawe: as for the other by his iudgement, it was no matter what mischiefe they suffered. To the other question of the chancerie, this I answered: That our lawe which is called of vs the common lawe as ye would say *Ius civile*, is and standeth vpon *dispositiua*, that is *Ius summum*: and their maximees be taken so straitlie that they may not depart from the tenour of the wordes euen as the olde ciuill lawe was. And therefore as that lacked the helpe of a Prætor (which might *moderari illud ius summum*, giue actions where none was, mitigate the exactnesse and rigour of the lawe wytten, giue exceptions, as *metus, doli mali, minoris ætatis, &c.* for remedies, and maintaine alwaies *æquum & bonum*;) the same order and rancke holdeth our chauncerie, and the chauncelloz hath the verie authoritie herein as had the Prætor in the olde ciuill lawe before the time of the Emperours. So be that putteth vp his bill in the chauncerie, after that he hath declared the mischiefe wherein he is, hath relæse as in the solemne *forum*. And for so much as in this case bee is without remedie in the common lawe, therefore he requireth the chauncelloz according to equitie and reason to prouide for him and to take such order as to good conscience shall appertaine. And the court of the chauncerie is called of the common people the court of conscience, because that the chauncelloz is not strained by rigour or forme of wordes of lawe to iudge but *ex æquo* and *bono*, and according to conscience as I haue saide. And in this court the vsuall and proper forme of pleading of Englands is not vsed, but the forme of pleading

ding by writing, which is vsed in other countries according to the ciuill lawe: and the tryall is not by ris. men, but by the examination of witnesse as in other courtes of the ciuill lawe.

Of Iudges in the common lawe of England, and the manner of tryall and pleading there.

CHAP. 12.

The Prince out of the numbers of those who haue bene Counsellors or Sergeants at the law, which be those who in latin are called *considici* or *advocati*, chooseth two of the most approued for learning, age, discretion, and exercise, of whom the one is called chiefe Justice of the Kings bench, or simply chiefe Justice, the other chiefe Justice of the common place, and others to the number of sixe or more, which haue each an ordinarie fee or stipend of the Prince.

These doe sit at such daies as be terme, which may be called *Dies legitimi iuridici* or *fasti*, in their distinct places as I haue said befoze. Where they heare the pleading of all matters which doe come befoze them: and in ciuill matters where the pleading is for money or land or possession, part by writing, and part by declaration and altercation of the aduocates the one with thother, it doth so procede befoze them till it doe come to the issue, which the latines doe call *statum causa*, I doe not meane *contestationem litis*, but as the Rhetoricians do call *statum*, we doe most properly call it the issue, for there is the place where the debate and strife remaineth (as a water held in a close and darke vessel issueth out, is voided and emptied) and no where else: that stroke well striken is the departing of all the quarrelles. Issues or *status* in our lawe bee ordinarily two, *facti* and *iuris*.

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Of

Of the two manner of issues.

CHAP. 13.

But sometimes
it is determi-
ned by the
same court
only.

This shoulde
be ment of a
respondes
ouster, when
the opinion is
against him
that taketh an
exception
which is not
peremptorie.

He may denie
it by protesta-
tion.

If the question be of the lawe, that is if both the parties doe agree vpon the fact, and each doe claime that by lawe he ought to haue it, and will still in that sort maintaine their right, then it is called a demurrer in lawe: where if in the lawe the case seme to the Judges that sitte doubtfull, it is called a checkerchamber case, and all the Judges will meete together, and what they shall pronounce to be the lawe, that is helde for right, and the other partie loseth his action or lande for ever. If the Sergeantes or counsellors doe stande vpon any point in the law which is not so doubtfull, the Judges who be taken for most expert bidde him go forwarde: and if he hath no other to say but standeth vpon that point of the lawe, that bidding goe forwarde is taken that he loseth his action, and the defendant is licensed to depart without a day: and this is where the issue or question is of the lawe or *Iuris*. So is that case where the lawe is not doubtfull according to the matter contained in the declaration, answer, replication, rejoinder or triplication, the Judge out of hande decideth it. And it is the manner that each partie must agree to the other still in y fact which he cannot denie. For if he once come to denie any deede as not done, not his writing, that the man by whome the aduersarie claimeth was not the aduersaries auncestor, or the evidence which his aduersarie bringeth is not true, or that his gift was former, or any such like exception which is vaileable to abate the action or barre the partie: and the other loyneth in the affirmatiue and will auerre and proue the same, this is called the issue, and immediately all question of the lawe ceaseth as agreed by both the parties

parties, that there is no question in the lawe. Then as that issue *facti* is founde by the iij men of whom wee shall speake hereafter, so the one partie or other loseth his cause and action: so that contrarie to the maner of the ciuill lawe where first the fact is examined by witnesses, indices, tormentes and such like probations to finde out the truth thereof, and that done the aduocats doe dispute of the law to make of it what they can: saying, *ex facto ius oritur*: here the Sergeantes or counselors befoze the Judges doe in passing forwarde with their pleading determine and agree vpon the lawe, and for the most part and in manner all actions as well criminall as ciuill, come to the issue & state of some fact which is denied of the one partie, and auerred of the other: which fact being tried by the iij men as they find, so the action is wonne or lost. And if a man haue many peremptorie exceptions (peremptorie exceptions I call onely those which can make the state and issue) because the iij men be commonly rude and ignorant, the partie shall be compelled to chouse one exception whereupon to founde his issue, which chosen if he faile in that by the verdict of iij men, he loseth his action and cause, and the rest can serue him for nothing.

Having seene both in France and other places many deuises, edictes and ordinaunces howe to abridge proces and to finde howe that long suites in law might be made shorter: I haue not perceiued nor reade as yet so wise, so iust, and so well deuised a meane found out as this by any man among vs in Europe.

Trueth it is that where this fashion hath not bene vbled and to them to whom it is newe, it will not be so easily vnderstood, and therfore they may peraduenture be of contrarie iudgement: but the moze they doe weigh and consider it, the moze reasonable they shall finde it.

Howe the issue, question or *status iuris* is decided, I

haue tolde: now I will shewe howe it is tryed when it doth come to the question, state or issue of the deede or fact. And first I must speake moze largely of the manner of proceeding in the processe, and of such persons as be necessary for the execution thereof.

Of the sherife of the shire, and of the court of exchequer.

CHAP. 14.

The Romans had to execute the commaundementes of the magistrates *Lictores, viatores, accensos*. The ciuill lawe sith that time hath other names, termes, and officers. The execution of the commaundementes of the magistrates in England is ordinarily done by the Sherifes. The sherife (which is as much to say as the *Kene* or *Wayly* of the shire) is properly word for word *Questor provincie*: it is he which gathereth vyppes and accownteth for the profittes of the shire, that come to the exchequer. The exchequer (which is *fiscus principis*, or *erarium publicum*, and I cannot tell in what language it is called *Scaccarium*, some thinks that it was first called *statarium*, because that there was the stable place to account for the reuenues of the crowne, aswell that which came of the patrimony which we call the demesnes: as that which cometh of other incident acquisitions be they rentes, customes, tenthes, quinziesmes, taxes, subsidies, wheresoeuer the Prince or his court be according to the time and occasion) was a place stable, continual and appointed for to reckon and account. The hearers of the account (who in latin may be called *tribuni ararii*) haue auditors vnder them which the Latines doe call *Rationales*: but they are the chiefe for the accounts of the Prince, and may be called *Iuridici rationales*, in English we call them Barons of the exchequer, whereof

whereof is one who is called the chiefe Baron, as *Tribunus* or *Iuridicus rationalis primus* or *princeps*. The chiefe of all is called high treasurer of Englande, as you would say in latin *Supremus ararij anglici quæstor*, or *Tribunus ararius maximus*. In this court be heard *Quadruplatores* (which we call promoters) which be those that in popular and penall action be *delatores*, hauing thereby part of the profit by the lawe assigned. In this court if anie question be, it is determined after the order of the common lawe of Englande by the xij men as I haue saide: and all customers which were in latin called *publicarij* in græke *πυλῶναι*, do account in this office. The Sherife of the shire is called in our common latin *vicecomes*, as one would say *vicarius comitis* or *procomes*, doing that seruice to attende vpon the execution of the commaundementes of the Tribunales or Judges which the Earle or countie should doe, which Earle or Countey for the most part was attending vpon the Prince in the warres or otherwise about the Prince as the worde beareth, *Comes principis*; whereby it may appeare that the chiefe office of the Countie or Earle was to see the kinges Justice to haue course and to be well executed in the shire or Countie, and the Princes reuenues well answered and brought in *ararium principis*, which is called of vs the treasure.

If any fines or amerçiements, which in latin be called *multæ*, be leuied in any of the saide courtes vpon any man or any arrerages of accountes by the latins called *reliqua*, of such thinges as is of customes, taxes, subsidies or any other such occasions, the same y^e Sherife of the shire doth gather and is respondent therfore in the exchequer. As for other ordinarie rentes of patrimoniall landes and most commonly for the taxes, customes, and subsidies, there be particular receivers and collectors which doe answere it into the exchequer. The Sherife hath vnder him an vnder Sherife at his charge

charge and appointment learned somewhat in the law, especially if he be not learned himselfe, & diuers bailifes which be called errantes, whom he maketh at his pleasure, who can knowe ech lande and person in the shire, and their abilitie to goe vpon enquestes, either to distreine or to summon him to appeare whom the sherife shal appoint, and for this cause to the sherifes as to the minister most proper of the lawe the writtes be directed.

When any thing cometh to an issue of the dede or fact, there is a writ or writing directed to the sherife of the shire where the lande is, whereupon the controuersie is, or where the man dwelleth of whom the money is demaunded, which writ is called *venire facias*. When after the same effect an *alias*, *pluries* or *distingas* according to the nature of the action to the returne of the sherife. And if for any disobedience or not coming and appearing there be a fine (which the latins doe call *Multa*) set vpon any iurozs head, the sherife is charged with it, and taketh the distresses which in latin be called *Pignora*, and answereth therfore to the exchequer. The sherife also is readie by himselfe or by his vndersherife to serue aswell the Justices of peace in their quarter sessions as y^e Justices called *Itinerantes* in their great assises, when they come into the shire, which is twise in the yeare, to dispatch and boide actions criminall and ciuil depending at the common law, and which be come nowe to the issue. He hath also the charge of all the prisoners comitted to y^e prison which we call the gaole, and when any is condemned to die, it is his charge to see the sentence executed. To be short, he is as it were the generall minister and highest for execution of such commaundementes according to the lawe as the Judges do ordaine, and this is ynough for the sherife.

Of the xij men.

CHAP. 15.

Of what manner and order of men in the common welth the xij men be I haue already declared. The Sherife alwaies warneth xiiij to appeare, least peradventure any might be sicke or haue a iust cause of absence: and if there be not enow to make an enquest, the absentes be amerced. For although they be called xii men as a man would say *duodecim viri*, yet if they be xvi, xx or the whole number of xiiij, that is no matter, xij they must be at the least to make an enquest or as some call it a quest. An enquest or quest is called this lawefull kinde of tryall by xii men. In actions ciuill which is either of contrades or for lande or possession when so many of those which be warned appeare at the Tall as be able to make an enquest, which as I saide be, soe be no lesse then xii, either part when they be come taketh their chalenges against so many of them as they will, which be that he may not spende so much lande a yeare, he is alied, freed, or seruant to his aduerse partie, he is his enemy &c. And two of the whole number doe trie and allowe or disallowe the rest. If after exceptions there be so many relected that there is not a full enquest, in some cases that day is lost, in some the enquest is filled *ex circumstantibus*: when the quest is full, they be swozne to declare the truth of that issue according to the evidence and their conscience. When the Sergeantes of either side declare the issue, and each for his client sayth as much as he can. Euidences of writings be shewed, witnesses be swozne, & hearde before them, not after the fashion of the ciuill law but openly, that not only the xii, but the Judges, the parties and as many as be present may heare what ech witnesse doeth

I iii

say:

That is not
order but a-
busc.

say: The aduerse partie oꝝ his aduocates which wee call counsellors and sergeants interrogateth sometime the witnesses, and dꝛiue them out of countenance. Although this may seeme strange to our ciuilians now, yet who readeth Cicero and Quintilian well shall see that there was no other order and maner of examining witnesses oꝝ deposing among the Romans in their time. When it is thought that it is enough pleaded before them, and the witnesses haue saide what they can, one of the Judges with a bꝛiefe and pitie recapitulation reciteth to the iꝛi in summe the argumentes of the sergeantes of either side, that which the witnesses haue declared, and the chiefe pointes of the euidence shewed in wꝛiting, and once againe putteth them in minde of the issue, and sometime giueth it them in wꝛiting, deliuering to them the euidence which is shewed on either part, if any be, (euidence heere is called wꝛittings of contractes autentical after the manner of England, that is to say, wꝛitten, sealed, and deliuered) and bidde them goe together. When there is a baylife charged with them to keepe them in a chamber not farre off without bread, dꝛinke, light, oꝝ fire vntill they be agreed, that is, till they all agree vpon one verditte concerning the same issue, and vpon one among them who shall speake for them all when they be agreed: soꝝ it goeth not by the most part, but each man must agree. They returne and in so fewe wordes as may be they giue their determination: fewe I call vij oꝝ viij oꝝ iij wordes at the most (soꝝ commonly the issue is brought so narrow, that such number of wordes may be ynough to affirme oꝝ to denie it) which done they are dismissed to goe whither they will. The partie with whom they haue giuen their sentence, giueth the enquest their dinner that day most commonly, and this is all that they haue for their labour, notwithstanding that they come some xx some xxx oꝝ xl miles oꝝ moꝛe, to the place where

Courtife and
not dutic.

where they giue their verditte all, the rest is of their owne charge. And necessarilie all the whole ris must be of the shire and iiii of them of the hundred where the lande lyeth which is in controuersie, or where the partie dwelleth who is the defendant.

Of parties of Shires called hundreds,
lathes, rapes, wapentakes.

CHAP. 16.

A hundred, or lath, rape, or wapentake be called of the diuisions or partes of shires in diuers countreys diuersly named after the manner and language of each countrey. For the shires be diuided some into i. xij. xliij. xvi. xx. or xxx hundreds, more or lesse, either that they were at the first C. towne & villages in ech hundred; and although now they be but xvi. xx. xxx. xl. l. lx. more or lesse, yet it is still called an hundred, or else there were but so many at the first as be now, or a few more or lesse, and they did finde the king to his warres an hundred able men. Lath, and rape I take to be names of seruite, for that so many townes in old time, and in the first pouertie of the Realme did meete together in one day to carrie the Lordes cozne into his barne, which is called in olde English a Lath. Or that they mette at commaundement of the Lorde to reape his cozne.

Wapentake I suppose came of the Danes or per-
adventure of the Saxons. For that so manie townes came by their orders then, to one place, where was taken a monster of their armour and weapons, in which place from them that could not finde sufficient pledges for their good abearing, their weapons were taken away: wapen or wapen in olde English doe signifie all armes offensive, as sworde, dagger, speare, launce, bill,
I iiii bowes,

bowes, arrowes.

Hundreds
were named
of townes,
hils, or other
markes.

Of the place where the monstres were taken or where the saide seruices were done, the hundreds, Lathes, Rapes, and wapentakes had and haue yet their names, which be most commonly good townes, and it is to be thought at the first they were all such. But sometime now in places whereof the hundred hath the name, no mention nor memorie of a towne remaineth, such mutation time bringeth with it of all thinges. A hundred hath one or two high Constables, who hath some authoritie ouer all the lower, and particular Constables. Those high Constables bee made by the Iustices of the peace of the shire, and each hundred hath his baylife, who is made by the Lord of it any hath that libertie, or else by the Sherife of the shire for the time being.

Of the court Baron.

CHAP. 17.

It may appeare strange that of xxxij shires, whereof each shire is diuided into diuerse hundreds, each hundred containing diuerse parishes, all pleading should be but in one place, that is in Westminster hall, and that but in certaine times of the yeare, making little more than one quarter of the yeare in the whole. And one would thinke yf there should be much lacke of Justice & right, and much wrong taken without redresse. But it is not so: The people being accustomed to line in such an equaltie of Justice, & that in such sort that yf rich hath no more aduantage therein than the poore, the proces, and proceedings to the iudgement being so short, and iudgements also being peremptorie and without appellation: Yet to helpe for small matters, where no great summe is in question there are other courtes.

courtes. In euerie shire from thre wêkes to thre wêkes the shirife for small thinges not passing xl. s. and in certaine hundzeds and liberties the baylie likewise from thre wêkes to thre wêkes holdeth plea. And whosoener is possessor and owner of a mannoꝝ, may holde from thre wêkes to thre wêkes, oꝝ at his pleasure of his tennantes and amongst his tennantes a court called a court Baron. And there his tennantes being swoꝝne make a Iurie which is not called the enquest, but the homage. These pꝛincipallie doe enquire of the copie holders, and other frê holders that be dead sith the last court, and bꝛing in their heires, and next succellours, and likewise of incroachment oꝝ intrusion of anie of the tennantes against the Loꝝde, oꝝ among themselves. They make oꝝders and lawes amongst themselves, the paine of them if they be after broken, cometh to the Loꝝde. And if anie small matter be in controuersie, it is put to them, and commonly they doe ende it. But these courtes doe serue rather for men that can be content to be oꝝdered by their neighbours, and which lous their quiet and profit in their husbandrie, moze than to be busie in the lawe. For whether partie soener will, may pꝛocure a writte out of the higher court to remoue the plea to Westmister.

In cities and other great towne there be diuerse liberties to holde plea for a bigger summe, which doe determine aswell as the common lawe, and after the same manner, and yet for them that will, it may be remoued to Westmister hall.

King Henric the eight oꝝdained first a pꝛesident, Counsellors and Judges, one for the marches of Wales, at Ludlowe, oꝝ else where: an other for the noꝝth parts of Englande at Poꝝke, where be manie causes determined. These two are as be Parliaments in Fraunce. But yet if there be anie matter of great consequence, the partie may moue it at the first, oꝝ re-

R

mons

move it afterwarde to Westminster hall, and to the ordinarie Judges of the Realmes, or to the Chancellor, as the matter is.

These two courtes doe heare matters befoze them, part after the common lawe of Englande, and part after the fashion of the chauncerie.

Of the Leete or lawe day.

CHAP. 18.

Lete or lawe day is not incident to enerie mannor, but to those onely which by special graunt, or long prescription haue such libertie. This was as it may appeare first a speciall trust and confidence and commission given to a felwe put in trust by the Prince, as is now to the Justices of peace, to see men swozne to the Prince, to take pledges and suerties in that maner of one for an other to answer for obedience and truth, to enquire of priuie conspiracies, fraies, murders, and bloodsheddes, and to this was added the ouersight of bread and ale, and other measures. Many times they that be out of the homage and court Baron of that mannor and Lordship, be neuerthelesse astreined and answerable to come to the Leete. This Leete is ordinarily kept but twise in the yeare, and that at termes and times prescribed.

The Leete or Lawe day is all one, and betokeneth woꝝde for woꝝde, *legittimum* or *iuridicum diem*. Lawe the olde Barons called lant or lag, and so by corruption and chaunning of language from Lant to Leete, vnderstanding day. They which keepe our full english terme, call it yet lawe day.

Of

Of the proceedings of causes criminal
minall, and first of the Iustices
of the Peace.

CHAP. 19.

BEfore the maner of proceeding in causes criminal
can be well vnderstood, it wil be necessarie to speake
of thre persons, the Iustices of peace, the Coroners,
and the Constables. The Iustices of peace be men e-
lected out of the nobilitie, higher and lower, that is the
Dukes, Marquises, Barons, Knightes, Esquiers, and
Gentlemen, and of such as be learned in the lawes,
such and in such number as the Prince shall thinke
meete, and in whome for wisdom and discretion he
putteth his trust, inhabitantes within the countie: sa-
ving that some of the high nobilitie and chiefe magi-
strates for honors sake are put in all, or in the most
of the commissions of all the shires of England. These
haue no time of their rule limited but by commission
from the Prince alterable at pleasure.

At the first they were but iij, after viij, nowe they
come commonly to xxx or xl in euery shire, either by
increase of riches, learning, or activitie in policie and
gouernement. So many more beeing founde, which
haue either will, or power, or both, are not too manie
to handle the affaires of the common wealth in this
behalfe. Of these in the same commission be certaine
named, which be called of the *Quorum*, in whome is e-
speciall trust reposed, that where the commission is gi-
uen to xl or xxx, and so at the last it commeth to iij or
thre, it is necessarie for the performance of many af-
faires to haue likewise diuers of the *Quorum*. The
wordes of the commission be such, *Quorum vos A. B.*
C. D. E. F. unum esse volumus.

The Iustices of the peace be those in whom at this
time

time for the repressing of robbers, theues, and vagabunds, of priuie complots, and conspiracies, of riotes, and violences, and all other misdemeanors in the common wealth, the Prince putteth his special trust. Each of them hath authoritie vpon complaint to him made of any theft, robberie, manslaughter, murder, violence, complotes, riottes, vnlawefull games, or any such disturbance of the peace, and quiet of the Realme, to commit the persons whom he supposeth offenders, to the prison, and to charge the Constable or Sherife to bring them thither, the gaoler to receaue them and keepe them till he and his fellows doe mete. A fewe lines signed with his hande is ynough for that purpose: these doe mete foure times in the yere, that is, in each quarter once, to enquire of all the misdemeanors aforesaide: at which daies the Sherife, or his vndersherife with his baylifes be there to attende vppon him, who must prepare against that time fower enquestes of xliij persons a peece of diuerse hundredes in the shire, and besides one which is called the great enquest out of the bodie of the shire mingled with all. These fower enquestes are swozne befoze them to enquire of all heretiques, traittors, thesses, murders, manslaughters, rapes, false moniers, extortioners, riottes, routes, forzible entries, vnlawefull games, and all such thinges as be contrarie to the peace and good order of the Realme, & to bring in their verdict. If they among themselves vpon their owne knowledge doe finde any culpable, they cause one of the clerkes to make the bill. And if any be there to complaine vppon any man for these faults, he putteth in his bil, which bil is presented first to the Iustices sitting vpon the bench, to see if it be conceived in forme of lawe, which done the complainant doth deliuer it to one of these enquestes, & after the complainant is swozne, he declareth to the what he saith, for the profe of it. And if they finde it true they do nothing but

write

This is not always and in all places observed, but onely concerning the ground enquest.

write on the backside of it *bulleta vera*, as ye would say, *scriptum verum*: or *accusatio instat*, or *rem est qui accusatur*: Then he who is there named is called indicted.

If they do not finde it true, they write on the backside *ignoramus*, & so deliuer it to the Justices of whome it is rent into peeces immediatly: he that is indicted is accounted a lawefull prisoner, and after that time looked moze strictly vnto. For this inditement is no conviction: and if he be indicted, and be not alreadie in prison, the Sherife if he can finde him, bringeth him into prison: if he cannot finde him, proces is made out against him, to render himselfe prisoner, or else hee shalbe outlawed. So he is called thre times in diuerse countie daies to render himselfe to the lawe. The fourth is called the exigent, by which he is outlawed not rendering himselfe, as ye would say: *exactus or accusus in exilium*. The outlawe loseth all his goods to the King for his disobedience. But if after he wil render himselfe to answer to the lawe, and shewe some reasonable cause of his absence, manie times of grace his outlawerie is pardoned. These meetings of the Justices of peace foure times in the yeare, be called quarter sessions or sessions of enquirie, because that nothing is there determined touching the malefactors, but onely the custodie of them: and this kinde of proceeding which is by inquisition of the xij men within themselves, and their owne consciences, or by denunciation of him that putteth in his bill to the xij, is called at the kings suite, and the king is reckoned the one partie, and the prisoner the other. The Justices of the peace doe meete also at other times by commandement of the Prince vpon suspicion of warre, to take order for the safetie of the shire, sometimes to take musters of harnes and able men, and sometime to take orders for the excessive wages of seruants and labourers, for excess of apparell, for vnlawefull games, for con-

The vse of *captias* and *exigentis* vpon inditementes is otherwise.

They are put to fines.

In it

uenti-

uenticles and euill orders in alehouses, and tauernes, for punishment of idle and vagabund persons, and generally as I haue saide, for the good gouernement of the shire, the Prince putteth his confidence in them. And commonly every yeare, or each seconde yeare in the beginning of summer or afterwarde, (for in the warme time the people for the most part be more unrulie) even in the calme time of peace, the Prince with his counsell chooseth out certaine articles out of penall lawes already made for to repress the pride and euill rule of the popular, and sendeth them downe to the Iustices, willing the to looke vpon those pointes, and after they haue mette together and consulted among themselves, howe to order that matter most wisely and circumspectly, whereby the people might be kept in good order and obedience after the lawe, they diuide themselves by three or foure: and so each in his quarter taketh order for the execution of the saide articles. And then within certaine space they mete againe and certifie the Prince or his priue counsell how they do finde the shire in rule & order touching those pointes and all other disorders. There was neuer in any commonwealth diuided a more wise, a more duke and gentle, nor a more certaine way to rule the people, whereby they are kept alwaies as if were in a bottle of good order, & sooner looked vnto that they should not offend, than punished when they haue offended. For seeing the chiefe amongst them, their rulers to haue this speciall charge and doe call vpon it, and if occasion so doe present, one or two presently either punished or sent to prison for disobedience to those olde orders & lawes, they take a feare within themselves, they amende and doe promise more amendment. So that it is as a newe forbusshing of the good lawes of the realme, and a continuall repressing of disorders, which doe naturally rest among men. But as the inuention of this, and the

the vse and execution thereof is the most benefitte that can be deuised for the common wealth of Englande: So when it shalbe misused, dissembled with, or be condemned, & be done *pro forma tantum*, and as they terme it in Fraunce par mainere d'acquit onely, it will be the present ruine (though not at the first apperceiued) of the common wealth. Of which the fault may be as well in the commaunders for not making good choice what and howe they commaunde, as in the commanded, for not executing that which is commaunded.

Of hue andcrie and recognisaunce

taking vppon them that may
giue euidence.

CHAP. 20.

By the olde lawe of Englande if any theft, or robberie be done, if he that is robbed, or he that seeth or perceiueth that any man is robbed doe leuie hue & crie, that is to say, doe call and crie for aide, and say that a theft or robberie is done contrarie to the Princes peace and assurance: The Constable of the village to whom he doth come, and so make that crie, ought to raise the parish to aide him and seeke the thiefe, and if the thiefe be not founde in that parish, to go to the next and raise that Constable, and so still by the Constables and them of the parish one after an other. This hue and crie from parish to parish is caried, till the thiefe or robber be founde. That parish which doeth not his dutie, but letteth by their negligence the thiefe to depart, doth not onely paie a fine to the king, but must repaie to the partie robbed his dammages. So that euerie Englishman is a sergiant to take the thiefe, and who sheweth himselfe negligent therein, doth not only incurre euill opinion therfore, but hardly shall escape
B. iiii.
punish.

punishment: what is done with the thiefe or robber when he is taken, I shall shewe you hereafter. The same manner is followed if anie man bee slaine, for straight the murderer is pursued of anie man till he be taken. So soone as any is brought to the Iustices of peace by this hne or crie, by the Constable or anie other who doth pursue the malefactor, he doeth examine the malefactor, and writeth the examination and his confession: then he doth binde the partie that is robbed or him that sueth, and the Constable, and so manie as can giue euidence against the malefactor to be at the next sessions of gaole deliuerie to giue their euidence for the Duene. He bindeth them in recognisance of x l. xx l. xxx l. xl l. or C. l. according to his discretion, and the qualitie of the crime: which certified vnder his bande, is lentied vpon the recognizance if they faile of being there.

Of the Coroner.

CHAP. 21.

But if anie man, woman, or child, be violently slaine, the murderer not knownen, no man ought or dare burie the bodie before the Coroner hath seene it. The Coroner is one chosen by the Prince of the meener sort of gentlemen, and for the most part a man seene in the lawes of the Realme to execute that office. And if the person slaine, (slaine I cal here, whosoener he be, man, woman, or child, that violently commeth to his death, whether it be by knife, poyson, cord, drowning, burning, suffocation, or otherwise, be it by his owne fault or default, or by any other) if (I say) the person slaine be buried before the Coroner doe come (which for the most part men dare not doe) he doeth cause the bodie to be taken vp againe, and to be searched, and
upon

Upon the sight of the bodie so violently come to his death, he doth empanell an enquest of xij men or mo, of those which come next by, be they strangers or inhabitantes, which upon their othes, and by the sight or viewe of the bodie, and by such informations as they can take, must search howe the person slaine came to his death, and by whome as the doer or causer thereof. These are not inclosed into a streit place, (as I tolde befoze of other enquestes) but are suffered to goe at large, and take a day, sometime after xx or xxx daies, moze or lesse, as the fact is moze evident, or moze kept close, to give their evidence, at which day they must appeare there againe befoze the saide Cozoner to giue their verdict. So sometime the person slaine himselfe, sometime the brother, the husbände, the wife, the sister, some of acquaintance or stranger, such as God wil haue reuelled, be taken. For whosoever they doe finde as guiltie of the murder, he is straight committed to prison, and this is against him in the nature of an indictment, which is not a full condemnation, as ye shall see hereafter.

The empanelling of this enquest, and the viewe of the bodie, and the giving of the verdict, is commonly in the streete in an open place, and in *Corona populi*: but I take rather that this name commeth because that the death of euerie subiect by violence is accounted to touch the crowne of the Prince, and to be a detriment vnto it, the Prince accounting that his strength, power, and crowne both stande and consist in the force of his people, and the maintenaunce of them in securitie and peace.

L

Of

Of the Constables.

CHAP. 22.

These men are called in the elder booke of our lawes of the Realme *custodes pacis*, and were at the first in greater reputation than they be nowe. It may appeare that there was a credit giue vnto them not altogether vnlike to that which is now giuen to the Iustices of peace. To this day if any affraie chaunce to be made, the Constables ought and will charge them that be at debate to keepe the p^{ar}ishes peace: and whosoener refuseth to obey the Constable therein, all the people will set streight vpon him, and by force make him to render himself to be ordered. Likewise if any be suspected of theft, or receiuing, or of murder, or of manslaughter, the Constable may take such persons, yea enter into any mans house with sufficient power to search for such men till he finde them: and if hee see cause keepe the suspected persons in the stocks, or custodie, til he bring them before a Justice of the peace to be examined. But for so much as euerie litle village hath commonly two Constables, and many times artificers, labourers and men of small abilitie be chosen vnto that office, who haue no great experience, nor knowledge, nor authoritie, the Constables at this present (although this they may do vpon their owne authoritie) yet they seeme rather to be as if were the executo^{rs} of the commaundement of the Iustices of peace. For the Justice of peace as soone as he vnderstandeth by complaint that any man hath stolen, robbed, slaine, or any seruant or labourer without licence hath departed out of his masters service, or any that liueth idle and suspectly, knowing once in what parish he is, he writeth to the Constable of the parish, commanding him

One or two
Constables,
hedboroughes
or tithingmen.

him in the Princes name to bring that man before him: the Constable dareth not disobey. The man is brought and examined by the Justice, and if the Justice doe finde cause, hee committeth him to the same Constable to conuey him further to the Princes gaole, where the partie must lie till the Justices of peace doe meete either at their quarter sessions, or at their gaole deliuerie, and that the lawe hath either condemned or acquitted him. These Constables are called in some places headboroughes, in some places tithingmen, and be like to them, who are called Consuls in manie townes and villages in Fraunce. The Constables are commonlie made and swoyne at the Leetes of the Lordes, chosen thereto by the homage, and they keepe that office sometime ij. iij. or iiij. yeare, moze or lesse, as the parish doth agree. What headborough doth betoken it is easily knowen, our language doth declare him as the head or chiefe of the borough or village: likewise tithing man is the cheife of y^e tithing. Constable seemeth to me to come of our old English worde kinnyng, which is Kinnyngstable, as ye would say a mā established by the king, for such thinges as appertaineth to pleas of the crowne & conseruation of the things peace, & as I saide at the first were in some moze reputation, approaching to that authozitie which the Justices of peace now doth holde.

Of the sessions of gaole deliuerie, and the definitiue proceedinges in causes criminall.

CHAP. 23.

Howe thieues and murtherers and other malefactors against the crowne and the peace are taken & brought into holde to answer to iustice, partly by hue and

Liij

and crie, partly by information, and partly by the diligence of the Iustices of peace and the Constables, and howe that at the quarter sessions they be indicted, or else by the Coroners yee haue hearde befoze. Enditement (as yee may perceiue by that which is also gone befoze) is but a former iudgement of xij men which be called enquirers, and no definitiue sentence; but that which in latin is called *prauidicium*, it doth but shewe what opinion the countrey hath of the malefactor: and therefore commonly men be endited absent, not called to it, nor knowing of it. For though a man be endited, yet if when he come to the arraignment, there be no man to pursue further, nor no euidence of witnesse or other triall and *indices* against him, he is without difficultie acquitted. No man that is once indicted can be deliuered without arraignment. For as xij haue giuen a prejudice against him, so xij againe must acquite or condemne him. But if the prisoner be not indicted, but sent to prison vpon some suspicion or suspicious behaviour, and none doe pursue him to the enditement, first being proclaimed thus, A. B. prisoner standeth here at the barre, if any man can say any thing against him, let him now speake, for the prisoner standeth at his deliuerance: if no man doe then come, hee is deliuered without any further proces or trouble, agreeing first with the gaoler for his fees. And these be called acquitted by proclamation. Twise euerie yeare the one is commonly in lent what time there is vacation from pleading in Westminster hall, the other is in the vacation in summer. The Prince doth sende downe into euery shire of Englande certaine of his Judges of Westminster hall, and some Sergeantes at the lawe with commission to heare and determine ioyntly with the Iustices of the peace all matters criminall and all prisoners which be in the gaules. These Judges doe goe from shire to shire till they haue done their circuit of so many

nie shires, as be appointed to them for that yeare: at the ende of the terme going before their circuit it is writtē and set vp in Westminster hall on what day and in what place they will be. That day there meeteth all the Iustices of the peace of that shire, the shirife of that shire, who for that time beareth their charges, and asketh after allowance for it in the Exchequer. The shirife hath readie for criminall causes (as I writtē before at the sessions of inquirie) iiii. v. or vi. enquestes readie warned to appeare that day to serue the Prince, and so manie more as he is commaunded to haue readie to go in ciuill matters betwixt private men, which they call *Nisi prius*, because that worde is in the writ.

In the towne house, or in some open or common place, there is a tribunall or place of iudgement made aloft vpon the highest bench, there sitteth the two Judges which be sent downe in Commission in the midst. Next them on eche side, sitteth the Iustices of peace, according to their estate and degree. On a lower bench before them, the rest of the Iustices of the peace, and some other gentlemen or their clarkes. Before these Judges and Iustices, there is a table set beneath, at which sitteth the *Custos rotulorum*, or keeper of writtes, Thershetor, the vnder shirife, and such clarkes as doe write. At the end of that table, there is a barre made with a space for thenquestes and xii. men to come in when they are called, behind that space another barre, and there stand the prisoners which be brought thither by the gaoler all chained one to another. When the cryer crieth, and commaundeth silence. One of the Judges briefly telleth the cause of their coming, & giveth a good lesson to the people. When the prisoners are called for by name, and bidden to aunswere to their names. And when the *Custos rotulorum* hath brought forth their enditements, the Judges do name one or

two or thre of the prisoners that are endicted, whom they will haue arraigned. Where the Clarke speaketh first to one of the prisoners: A. B. come to the barre, hold vp thy hand. The Clarke goeth on: A. B. thou by the name of A. B. of such a towne, in such a countie, art endicted, that such a day, in such a place, thou hast stolen with force and armes an horse, which was such ones, of such a colour, to such a balo, and carried him away feloniously, & contrarie to the peace of our soueraigne Ladie the Quene. What sayest thou to it, art thou guiltie or not guiltie? If he will not aunswere, or not aunswere directly guiltie or not guiltie, after he hath bene once or twise so interrogated, he is iudged mute, that is dumme by contumacie, and his condemnation is to be pressed to death, which is one of the cruellest deathes that may be: he is layd vpon a table, and another vppon him, and so much weight of stones or lead laide vppon that table, while as his bodie be crushed, & his life by that violence taken from him. This death some strong & stout hearted man doth chouse, for being not condemned of felonie, his bloud is not corrupted, his lands nor goods confiscate to the Prince, which in all cases of felonie are commonly lost from him and his heires, if he be so iudged, that is condemned for a felon by the lawe. If he confesse the enditement to be true, then when he is arraigned, no xii. men goeth vpon him, there resteth but the Iudges sentence, of the paine of death.

If he pleade not guiltie, as commonly all theues, robbers, & murderers doe, though they haue confessed the fact befoze the Justice of the peace that examined them, though they be taken with the manner, which in Latine they call *inflagranti crimine*, howsoever it be, if he pleade there not guiltie, the Clarke asketh him howe he will be tryed, and telleth him he must saie, by God and the Countrie, for these be the words formall

of

of this triall after Inditement, and where the Prince is partie: if the prisoner doe say so, I will be tryed by God and the Countrie, then the Clarke replyeth, Thou hast bene endicted of such a crime, &c. Thou hast pleaded not guiltie: being asked how thou wilt be tryed, thou hast answered by God and by the Countrie. Doe these honest men that be come here, be in the place and stead of the Countrie: and if thou hast any thing to say to any of them, loke vpon them well and nowe speake, for thou standest vpon thy life & death. When calleth he in the first Juror, B. C. come to the booke, and so giueth him an othe to goe vprightlie betwixt the Prince and the prisoner, &c. If the prisoner objecteth nothing against him, he calleth an other, and so an other, till there be xii. or above: and for the most part the prisoner can say nothing against them, for they are chosen but for that day, and are vnknewen to him, nor they know not him, as I said being substantiall yeomen, that dwell about the place, or at the least in the hundred, or nere where the felonie is supposed to be committed, men acquainted with daily labour and trauaile, and not with such idle persons, as be readie to doe such mischiefes.

When the enquest is full, and the prisoner hath objected nothing against them, as in deede selde he doeth, for the cause aboue rehearsed: The Clarke saith to the cryer, countes, (in French as ye would say reckon) and so nameth all those that be on the quest. The cryer at euerie name cryeth aloude, one, then ij. iij. iiii. and so till the number be full of xii. or more, & then saith good men and true: and then sayth aloude: If any can giue euidence, or can saie any thing against the prisoner, let him come nowe, for he standeth vpon his deliuerance. If no man come in, then the Judge asketh who sent him to prison, who is commonly one of the Iustices of peace. He if he be there deliuereth vp the

A. liij.

exami.

examination which he took of him, and underneath the names of those whom he hath bound to give evidence, although the malefactor hath confessed the crime to the Justice of the peace, and that appeare by his hande and confirmation, the xij. men will acquite the prisoner, but they which should give evidence pay their recognizance. Doubteit this doth seldome chaunce, except it be in small matters, and where the Justices of peace, who sent the prisoner to the gaole, is away. If they which be bound to give evidence come in, first is read the examination, which the Justice of peace doeth give in: then is heard (if he be there) the man robbed what he can say, being first swozne to say trueth, and after the Constable, and as many as were at the apprehension of the malefactor: and so many as can say any thing being swozn one after an other to say truth. These be set in such a place as they may see þe Judges and the Justices, the enquest and the prisoner, & heare them, and be heard of them all. The Judge first after they be swozne, asketh first the partie robbed, if he knowe the prisoner, and biddeth him looke upon him: he saith yea, the prisoner sometime saith nay. The partie pursuivant giueth good ensignes *verbi gratia*, I knowe thee well ynough, thou robbedst me in such a place, thou beatest mee, thou tookest my horse from mee, and my purse, thou hadst then such a coate and such a man in thy companie: the theefe will say no, and so they stand a while in altercation, then he telleth al that he can say: after him likewise all those who were at the apprehension of the prisoner, or who can give any *induces* or tokens which we call in our language evidence against the malefactor. When the Judge hath heard them say ynough, he asketh if they can say any moze: if they say no, then he turneth his spæche to the enquest. Good men (:saith he) ye of the enquest, ye haue heard what these men say against the prisoner,

prisoner, you haue also heard what the prisoner can say for himselfe, haue an eye to your othe, and to your due tie, & doe that which God shall put in your mindes to the discharge of your consciences, and marke well what is saide. Thus sometime with one enquest is passed to the number of ij. or iij. prisoners: For if they should be charged with moze, the inquest will say, my Lord, we pray you charge vs with no moze, it is ynough for our memorie. Many times they are charged but with one or two. At their departing, they haue in writing nothing giuen them, but the enditement, the clarke repeating to them the effect of it, and shewing moze, that if they finde him guiltie, they shall enquire what goods, lands, and tenements, the saide person had at the time of the felonie committed: and if they finde any, they shall bring it in: if no, they shall say so. If they finde him not guiltie, they shall enquire whether he fled for the felonie or no.

And there is a bailife to waite vpon them, and to see that no man doe speake with them, and that they haue neither bread, drinke, meate, ne fire brought to them, but there to remaine in a chamber together till they agree. If they be in doubt of any thing that is saide, or would heare againe some of them that giue euidence to interrogate them moze at full, or if any that can giue euidence come late: it is permitted that any that is sworn to say the trueth, may be interrogated of them to enforce their consciences. This is to be vnderstood although it will seeme straunge to all nations that doe vse the ciuill Lawe of the Romane Emperours, that for life and death there is nothing put in writing but the enditement onely. All the rest is done openlie in the presence of the Judges, the Iustices, the enquest, the prisoner, and so manie as will or can come so neare as to heare it, and all depositions and witnessses giuen aloude, that all men may heare from the mouth of the

depositors and witnesses what is saide. As of this, so is it of all other prisoners after the same sort. By that time that the enquests for the prisoners be dispatched, it is commonlie dinner time, the Judges and Justices goe to dinner, and after dinner returne to the same place: if the enquest be not ready for the prisoners, they goe to some other enquests of *nisi prius*, which be ciuill matters and priuate to vniue out the time. The enquests haue no sooner agreed vpon their charge one way or other, but they tell the Bailife, and pray to be heard, and considering that they be themselves all this while as prisoners as I saide before, it is no maruell, though they make expedition. The prisoners be sent for againe to the barre, the enquest which hath agreed, is called for eche one of the Iurie by his name, to which he answereth. When the clarke asketh if they be agreed, and who shall speake for them. One or moe saith yea. He that speaketh for them all is called the foreman, and commonlie it is he that is first swozne: then the prisoner is bidden to holde vp his hande. The clarke saith vnto him, Thou art endicted by the name of A. of such a place, &c. being therefore arraigned thou pleadest thereto not guiltie, being asked howe thou would be tryed, thou saydest by God and thy countrey. These honest men were giuen to thee by God & thy Prince for thy Countrey: Hearken what they say. When he asketh of the enquest, what say you? Is he guiltie or not guiltie? The foreman maketh aunswere in one worde, guiltie, or in two, not guiltie: the one is deadly, the other acquiteth the prisoner. So that neither Judge nor Justice hath to doe, or can reverse, alter or chaunge that matter, if they say guiltie. The clarke asketh what landes, tenements, or goods, the prisoner had at the time of the felonie committed, or at any time after. Commonlie it is answered that they knowe not, nor it shall not greatly neede, for the Sherife is diligent

diligent enough to enquire of that, for the Princes and his owne aduantage, and so is the ercheatoz also.

Of him whom the iij. men pronounce guiltie, the Judge asketh what he can say for himselfe: if he can reade, he demaundeth his Clergie. For in many felonies, as in theft of oren, sheepe, money, or other such things which be no open robberies, by the high way side, nor assaulting one by night in his house, putting him that is there in feare, such is the fauour of our Lawe, that for the first fault the felon shalbe admitted to his Clergie, for which purpose the Bishop must send one with authoritie vnder his seale to be Judge in that matter at euerie gaols delinerie. If the condemned man demandeth to be admitted to his booke, the Judge commonly giueth him a Psalter, and turneth to what place he will. The prisoner readeth as well as he can (God knoweth sometime very slenderly :) then he asketh of the Bishops commissarie, *legit vi clericus?* The commissarie must say *legit* or *non legit*, for these be woordes sozmall, and our men of Lawe be very precise in their woordes sozmall. If he say *legit*, the Judge proceedeth no further to sentence of death: if he say *non*, the Judge saithwith, or the next day proceedeth to sentence, which is done by woord of mouth onelie: Thou A. hast bene indicted of such a felonie and thereof arraigned, thou hast pleaded not guiltie, and put thy selfe vpon God and thy Countrie, they haue found thee guiltie, thou hast nothing to say for thy selfe, the Lawe is, thou shalt first returne to the place from whence thou camest, from thence thou shalt goe to the place of execution, there thou shalt hang till thou be dead. When he saith to the Sherife, Sherife doe execution: he that claimeth his Clergie, is burned sothwith in the presence of the Judges in the brawne of his hand with a hot yron marked with the letter T. for a theefe, or M. for a mansleer, in cases where Clergie

¶ ij.

The deliuerie
to the Bishops
prison, and
the purgation
is taken away
by statute.

They must be
two at the
least that
conspired.

gie is admitted, and is deliuered to the Bishops officer to be kept in the Bishops prison, from whence after a certaine time by an other enquest of Clarkes he is deliuered and let at large: but if he be taken and condemned the second time, and his marke espied, he goeth to hanging. He whom the enquest pronounceth not guilty is acquitted forthwith and discharged of prison, paying the gaolers fees: and if he knowe any private man who purchased his inditement, and is able to pursue it, he may haue an action of conspiracie against him, and a large amendes: but that case chaunreth seldom.

Certaine orders peculiar to England, touching punishment of malefactors.

CHAP. 24.

FOR any felonie, manslaughter, robbery, murder, rape, and such capitall crimes as touch not treason & *lesam maiestatem*, we haue by the Lawe of England no other punishment, but to hang till they be dead: when they be dead, euerie man may burie them that will, as commonly they be. Heading, tormenting, demembzing, either arme or legge, breaking vpon the wheele, empaling, and such cruel torments, as be used in other nations by the order of their law, we haue not: yet as few murders committed as any where: nor it is not in the Judges or the Iustices power, to aggravate or mitigate the punishment of the Lawe, but in the Prince onely and his private Counsell, which is marvellous seldom done. Yet notable murderers many times by the Princes commaundement, after they be hanged with corde till they be dead, bee hanged with chaines while they rotte in the ayre. If the wife kill her husbände, she shall bee burned alive. If the

ser.

seruant kill his master, hee shalbee dꝛawen on a hurdle to the place of execution: it is called petit treason. Impoisoners, if the person die thereof, by a new lawe made in king Henrie the eightes time shalbe boyled to death: but this mischiefe is rare and almost vnknown in England. Attempting to impoison a man, or laying await to kill a man, though he wound him dangerously, yet if death followe not, is no felony by the lawe of Englande, for the Prince hath lost no man, and life ought to be giuen we say, but for life only. And againe, when a man is murdered, all be principals and shall die, euen he that doth but hold the candle to giue light to the murderers. For mitigation and moderation of paines, is but corruption of Iudges as we thinke. Likewise, torment or question which is vsed by the order of the ciuill lawe and custome of other countreies to put a malefactor to excessive paine, to make him confesse of him selfe, or of his fellowes or complices, is not vsed in England, it is taken for seruile. For what can he serue the common wealth after as a free man, who hath his bodie so hailed and tormented, if he be not found guiltie, and what amends can be made him? And if he must die, what crueltie is it so to torment him before? Likewise, confession by torment is esteemed for nothing, for if he confesse at the iudgement, the tryall of the ris. goeth not vpon him: If he denie the fact, that which he said before hindereth him not. The nature of English men is to neglect death, to abide no torment: And therefore he will confesse rather to haue done any thing, yea, to haue killed his own father, than to suffer torment, for death our nation doth not so much esteeme as a mean to torment. In no place shal you see malefactors go more constantly, more assuredly, & with lesse lamentation to their death than in England. Againe, the people not accustomed to see such cruel torments, will pittie the person tormented, and

Quere.

ap. 115.

abhoyre

abhorre the Prince and the Judges, who should bring in such crueltie amongst them, and the xij. men the rather absolue him. There is an olde lawe of England, that if any gaoler shall put any prisoner being in his custodie to any torment, to the intent to make him an approuer, that is to saie an accuser or *Index* of his complices, the gaoler shall dye therfore as a felon. And to say the trueth, to what purpose is it to vse torment? For whether the malefactor confesse or no, and whatsoeuer he saith, if the enquest of xij. do find him guiltie, he dyeth therfore without delaye. And the malefactor, seeing there is no remedie, and that they be his countrie men, and such as he hath himselfe agreed vnto it, do finde them worthe death, yeldes for the most part vnto it, and doeth not repine, but doth accomodate himselfe to aske mercie of God. The nature of our nation is free, stout, haulte, prodigall of life and bloud: but contumelie, beatings, seruitude and seruile torment & punishment it will not abide. So in this nature and fashion, our aunient Princes and legislators haue nourished them, as to make them stout hearted, courageous and souldiers, not villaines and slaues, and that is the scope almost of all our policie. The xij. as soone as they haue given their verdict are dismissed to goe whither they will, and haue no manner commoditie & profit of their labour and verdict, but onely do seruice to the Prince and commonwealth.

Of Treason, & the trial which is vsed for the higher nobilitie and Barons.

CHAP. 25.

The same order touching trial by enquest of xij. men is taken in Treason, but the paine is moze cruell. First to be hanged, taken downe aliue, his bowels taken

ken out and burned befoze his face, then to be beheaded, and quartered, and those set vp in diuerse places. If anie Duke, Marques, or any other of the degree of a Baron, or aboue, Lord of the Parliament be appeached of treason, or anie other capitall crime, he is iudged by his peeres and equals: that is, the yeomanrie both not go vpon him, but an enquest of the Lordes of the Parliament, and they giue their voice, not one for all, but eche seuerally as they do in Parliament, beginning at the yongest lord. And for Iudge one lord sitteth, who is Constable of England for that day. The iudgement once giuen, he breaketh his staffe and abdicateth his office. In the rest there is no difference from that aboue written.

Or rather
high stewarde
of Englande.

THE THIRDE booke.

Of that which in other countries is called
appellation, or *promocation*, to amend the iudgement
or sentence definitiue, which is thought
vniustly giuen in causes criminall.

CHAP. I.



If the enquest of rymen
do seme to the Iudges &
the Iustices to haue gon
too violently against the
euidence giuen in mat-
ters criminall, either it
is that vpon slender eu-
dence they haue pro-
nounced him guiltie, who
the Iudges & most part
of

of the Iustices thinke by the euidence not fallie proued guiltie, or for some other cause, do thinke the person rather worthie to liue than to die. The enquest is neuerthelesse dimissed: but when the Iudges should pronounce the sentence of death vpon the person found guiltie, he will differ it, which is called to reprieue the prisoner (that is to say to sende him againe to prison) and so declare the matter to the Prince, and obtaineth after a time for the prisoner his pardon: and as for prouocation or appeale which is vsed so much in other countries, it hath no place in England, after sentence giuen by the iiii, whereby the person is founde guiltie or not guiltie: but without that reprieuing the sentence is straight put in execution by the Sherife. And if they either escape or die an other death, the Sherife escapeth not to paie a great fine and ransom at the Princes mercie: if hauing pregnant euidence neuerthelesse the iiii doe acquite the malefactor, which they will doe sometime, and especially if they perceiue either one of the Iustices, or of the Iudges, or some other man to pursue too much and too malitiously the death of the prisoner, and doe suspect some subornation of the witnesse, or them which doe giue euidence, and sometime if they perceiue the Iudge would haue the prisoner escape, and in repeating the euidence doe giue them thereof some watchworde. But if they doe as I haue saide, pronounce not guiltie vpon the prisoner against whom manifest witnesse is brought in, the prisoner escapeth: but the iiii not onely be rebuked by the Iudges, but also threatned of punishment, and many times commaunded to appeare in the Starre chamber, or before the priuie counsell for the matter. But this threatning chaunceth oftener than the execution thereof, and the iiii answere with most gentle wordes, they did it according to their consciences, and pray the Iudges to be good vnto them, they did as they thought right, and as they

they accorded all, and so it passeth away for the most part. Yet I haue seene in my time (but not in the raigne of the Quene now) that an enquest for pronouncing one not guiltie of treason contrarie to such euidence as was brought in, were not onely imprisoned for a space, but an honge fine set vpon their heads, which they were faine to pay: An other enquest for acquitting an other, beside paying a fine of money, put to open ignominie and shame. But those doinges were euen then of many accounted verie violent, tyrannicall, and contrarie to the libertie and custome of the realme of England. Wherefore it commeth verie sel-dome in vse, yet so much at a time the enquest may be corrupted, that the Prince may haue cause with iustice to punish them: For they are men, and subiect to corruption and partialitie, as others be.

What remedie is, if the sentence be
thought vniusally giuen,

CHAP. 2.

If causes ciuill there is another order: for if after the matter be pleaded to the issue, and the xij men thereupon impaneled, the euidence brought and pleaded before them on both the parties, the xij seeme to be partiaill, and to haue giuen sentence contrarie to the euidence shewed vnto them: the partie grieved may bring against them, and the partie for whome the sentence is giuen, a writ of attaint: and where as before vpon the first quest commonly they all be yeomen, now vpon this attaint must go xiiij gentlemen dwelling within the shire, and xij at the least of the hundredth where the lande lyeth. The matter is pleaded againe before the same Judges. The partie defendant is not onely now he, who claimeth the lande, but also all

P.

and

No more evidence on the behalfe of the plaintife, but of the defendant there may.

The statute of 23. Henric 8. doth not abolish common lawe, but giueth a more profitable for the plaintife.

and euery of the yeomen, who by their verdict did giue it him. There must in the attaint no more evidence be brought in, but onely that which was brought in, and alledged befoze the first enquest. And if this seconde enquest of xiiij gentlemen do adiudge as the first did, the plaintife shall not onely lose the land, but also paie a fine to the Prince and damages to the partie. If this seconde enquest do finde that the first enquest hath gone partially, and against the evidence brought in befoze them, the first enquest is called attainted, and accounted as periured and infamed. The Prince had befoze the waste of all their lands and possessions with other punishments, which at this present by a lawe made by parliament in the time of king Henric the eight is abolished, and nowe by that lawe or act of parliament, beside other punishment, eche of the quest attainted payeth vnto the Prince and partie v. li. if it be vnder fourtie poundes: and if aboue, then xx. li. Attaints be verie seldome put in vze, partly because the gentlemen will not meete to slander and deface the honest yeomen their neighbours: so that of a long time, they had rather paie a mean fine than to appeare and make the enquest. And in the meane time they will intreat so much as in them lyeth the parties to come to some composition and agreement among them selues, as lightly they do, except either the corruption of the enquest be too euident, or the one partie is too obstinate and headstrong. And if the gentlemen do appeare, gladlyer they will confirme the first sentence, for the causes which I haue saide, than go against it. But if the corruption be too much euident, they will not sticke to attaint the first enquest: yet after the gentlemen haue attainted the yeomen, if befoze the sentence be giuen by the Judge (which ordinarily for a time is deferred) the parties be agreed, or one of them be dead, the attaint ceaseth.

If at anie time before the sentence be given or put in execution, there be found some such error in the writ, in the proces, or forme (as our lawyers be verie precise and curious of their formes) that it may be reuocable, it is brought afresh to the disputation by a writ of error, and all that is done reversed. But that is common to all other countries, where the ciuill law is vsed, which they call *de nullitate processum*, and serueth both in Englande and in other places aswell in causes criminall, as ciuill. Other kinde of appellation to reuoke processe, and to make them of short, long, of long, infinite, which is vsed by the ciuill lawe, we haue not in our common lawe of Englande. By supplication to the Prince and complaint to the Chauncelloe vpon supposall of losse or lacke of euidence, or too much fauour in the countrey, and power of the aduersarie, there is in our countrey as well as theirs both stopping and prolongation of Justice. For what will not busie heades and louers of trouble neuer being satisfied inuent in any countrey to haue their desire, which is to vex their neighbours, and to liue alwaies in disquiet? Men euen permitted of God like flies, and lice, and other vermine to disquiet them, who would imploie themselues vpon better businesse and moze necessarie for the common wealth: these men are hated, and feared of their neighbours, loved and aided of them which gaine by proces, and ware fatte by the expence & trouble of other. But as these men ordinarily spende their owne thysit, and make others against their wills to spende theirs: so sometime being thoroughly known, they do not onely liue by the losse like euill husbandes, but beside rebuke & shame, by the equitie of the Prince and courtes soueraigne, they come to be extraordinarily punished, both corporally, & by their purse, which thing in my minde is as royall and princely an act, and so beneficiall to the commonwealth, as in so small a

matter a King or a Quene can doe, for the repose and good education of their subiectes.

Of that which in England is called appeal, in other places accusation.

CHAP. 3.

If any man hath killed my father, my sonne, my wife, my brother, or next kinsman, I haue choice to cause him to be endicted, by giuing information to the enquest of enquirie, (although he chaunce to escape the Constable or Iustices handes, and therefore not to be apprehended) and thereupon to procure him to be outlawed, or else within a yere and a day I may enter my appeale, that is mine accusation against him. If I begun first to pursue him by information or denuncia- tion to enditement, I am now no partie but the Prince, who for his duetie to God and his common wealth and subiects, must see iustice executed against all malefactoris & offenders against the peace, which is called Gods and his, & doeth in such maner as I haue saide befoze. If I leaue that and will appeale, which is profer my accusation against him who hath done to me this iniurie, the defendant hath this aduantage to put himselfe to the Iurie, which is to that which be- fore is saide to haue that issue and triall by God and his countrie, whereof the fashion I haue at large declared: or to demaund the triall by battle, wherein both the parties must eyther themselves in person, or else singe other for them, who be called in our Law Champions or Campions, some doeth interprete them *dehors*, be- cause they be men chosen, fat, lustie, fit to the seate, or as the Frenche doe terme them *adroicts aux armes*, which shall fight it out by *mortuaries*, or as now they doe call it *duellum*, or the campe, which shall haue all things equall: but according as Mats giueth the victo- rie,

In appeale the battle is tryed by the parties onely, and in writs of right by champions.

rie, so the Lawe is iudged the one as *peractus reus*, the other is *calumniator* to suffer the paine of death. So that by the great assise there is no appellation but death or life to the defendand, but this is moze dangerous and equall, for the one or the other must die. So it is not in the grande assise, for the *reus* or defendand is onely in daunger of death. Short it is from day to sunne set, the quarell is ended, or soner who hath the better fortune. This seemeth very militarie (as in maner all our policie of Englande) and to haue as small to doe with Lawyers as with Whisitions, quicklie to dispatche, and for the rest to returne, eche man to his buisinesse, to serue the common wealth in his vocation. The Popes of Rome, and men of the Church who of long time haue had dominion in our consciences, and would bring things to a moze moderation, haue much detested this kinde of triall and iudgement, as reason is euerie man misliketh that which is not like to his education, and colde reasoning by Theologie and Philosophie: they I say much mislike many things done necessarily in whot policie. At the least a common wealth militarie must aduventure many things to keepe it in quiet, which cannot seeme so precisely good to them which dispute thereof in the shadowe and in their studies: Howsoeuer it be, this kinde of triall of long time hath not bene bled. So that at this time we may rather seeke the experience of it out of our histories of time passed, than of any viewe or sight thereof, of them which are nowe alive. Forwerthelesse the Lawe remaineth still, and is not abolished, and if it shall chaunce the murderere or mansleer (the one we call him that lyeth in waite, and as they terme it in Frenche *de guet appendaunt* killeth the man, the other who by casuall falling out and so daime debate and choller doeth the same which way soeuer it be done) if he that hath slaine the man, hath

The battle or
Iurie is at the
election of
the defendant

his pardon of the p[ri]nce, as occasion o[er] the fauour of the
P[ri]nce may so p[re]sent, y[et] he may haue it, yet the partie
griued hath these two remedies, I say to require iu-
stice by grand assise, o[er] battle vpon his appeale & p[ri]-
uate reuenge, which is not denyed him. And if the de-
fendant either by great assise o[er] by battle be conuicted
vpon that appeale, he shall die, notwithstanding the
P[ri]nces pardon. So much fauourable our P[ri]nces
be, and the lawe of our Realme to iustice and to the
punishment of blood violently shed.

Of the Court of Starre Chamber.

CHAP. 4.

There is yet in Englande an other court, of the
which that I can vnderstand there is not the like in
any other Countre. In the Terme time (the Terme
time as I haue heretofore shewed, I call the time and
those daies when the Lawe is exercised in Westmin-
ster hall, which as I haue said is but at certaine times
and termes) euery weeke once at the least, which is
commonly on Fridaies, and Wednesdaies, and the
next day after that the terme doeth ende, the Lorde
Chauncello[er], and the Lordes and other of the p[ri]uie
Counsell, so many as will, and other Lordes and Ba-
rons which be not of the p[ri]uie Counsell, and be in the
towne, and the Judges of England, specially the two
chiefe Judges, from ix. of the clocke till it be xi. doe sit
in a place which is called the Starre chamber, either be-
cause it is full of windowes, o[er] because at the first all
the roose thereof was decked with images of Starres
gilded. There is plaints heard of riots. Riot is cal-
led in our English terme o[er] speache, where any num-
ber is assembled with force to doe any thing: and it
had the beginning, because that our being much ac-
stomed

stomed either in fozeine wars, in Fraunce, Scotland,
 or Ireland, or being ouermuch exercised with ci-
 uill warres within the Realme (which is the fault
 that falleth ordinarily amongst bellicons nations)
 whereby men of warre, Captaines and souldiers be-
 come plentifull: which when they haue no externe ser-
 uice wherewith to occupie their busie heads & handes
 accustomed to fight and quarell, must needs seeke qua-
 rels and contentions amongst themselves, and be-
 come so readie to oppresse right among their neigh-
 bours, as they were wont befoze with prais of man-
 hode, to be in resisting iniurie offered by their ene-
 mies. So that our nation bled hereunto, & vpon that
 moze insolent at home, and not easie to be gouerned by
 Lawe and politike order, men of power beginning ma-
 ny fraies, and the stronger by factions and parties of-
 fering too much iuinie to the weaker, were occasions
 of making good Lawes. First of retainers, that no
 man should haue about a number in his Liuerie or re-
 tinue: then of the enquirie of ronts and riots at euerie
 Sessions, and of the lawe whereby it is prouided that
 if any by force or by riot enter vpon any possessions,
 the Iustices of the peace shal assemble themselves & re-
 moue the force, & within certain time enquire thereof.
 And further, because such things are not commonlie
 done by meane men, but by such as be of power & force,
 & be not to be dealt withal of euerie man, nor of meane
 Gentlemen: if the riot be found & certified to the Kings
 Counsell, or if otherwise it be complained of, the
 partie is sent for, and he must appeare in this Starre
 chamber, where seeing (except the presence of the
 Prince onely) as it were the maiestie of the whole
 Realme befoze him, being neuer so stout, he will be
 abashed: and being called to aunswere (as he must
 come of what degree soener he be) he shall be so charged
 with such grauitie, with such reason & remonstrance,

Sent for by
 Sub poena.

P. iiii.

and

and of those chiefe personages of Englande, one after another handeling him on that sort, that what courage soener he hath, his heart will fall to the ground, and so much the more, when if he make not his answer the better, as seldome he can in so open violence, he shall be commaunded to the flöete, where he shall be kept in prison in such sort as these Judges shall appoint him, lie there till he be wearie aswell of the restraint of his libertie, as of the great expences, which he must there sustaine, and for a time be forgotten, whiles after long suite of his friendes, he will be glad to be ordered by reason. Sometime as his deserts be, he payeth a great fine to the Prince, besides great costs and dammages to the partie, and yet the matter wherefoze he attempteth this riot and violence is remitted to the common lawe. For that is the effect of this Court to bzidle such stoute noble men, or Gentlemen which would offer wrong by force to any manner men, and cannot be content to demaund or defend the right by order of lawe. This court began long befoze, but toke great augmentation and authoritie at that time that Cardinall Wolsey Archebishop of Yorke was Chauncelloz of Englande, who of some was thought to haue first deuised y Court, because that he after some intermission by negligence of time, augmented the authoritie of it, which was at that time maruellous necessary to doe, to repressse the insolencie of the noble men and gentlemen of the North partes of Englande, who being farre from the king and the seate of iustice made almost as it were an ordinarie warre among themselves, and made their force their Lawe, banding themselves with their tenants and seruants to doe or reuenge iniurie one against another as they listed. This thing seemed not suppoztable to the noble prince king Henric the eight. and sending for them one after another to his Court to answer befoze

before the persons before named, after they had had remonstrance shewed them of their euill demeanour, and being well disciplined as well by words as by striking a while, and thereby their purse and courage somewhat abridged, they began to range themselves in order, and to understand that they had a Prince who would rule his subjects by his lawes and obedience. With that time this court hath bene in more estimation, and is continued to this day in manner as I haue saide before.

Of the Courts of Wards and Liueries.

CHAP. 5.

HE whom we call a ward in Englande, is called in Latine *pupillus*, and in Greeke *ὑπομέτωπος*. The gardian is called in Latine *tutor*, in Greeke *ἐκτετακτος*. A warde of infant is taken for a childe in base age, whose father is dead. The Romanes made two distinctions *pupillum* & *minor*, the one to xiiii. yere old, the other was accounted from thence to xxv. And as *pupillus* had *tutorem*, so *minor* had *curatorem* til he came to the age of xxv. These tutors or curators were accountable for the reuenues of the pupils minors lands, & great provision and many lawes and orders is made for them in the booke of the ciuil Lawe, for rendering inll & true accounts. So that to be a gardian or tutor was accounted among them to be a charge or trouble, a thing subject to much encumbrance and small profite, so that diuerse meanes were sought for, to excuse men from it. Altho vs this is cleane contrarie, for it is reckoned a profite to haue a warde. For the Lord of whom the warde doeth hold the land, so soon as by the death of the father the childe falleth warde vnto him, he sealeth vpon the body of the ward and his landes, of which (so that he doeth nourish the ward,) he taketh the profite without ac-
D
counts,

Gardian in
cheualry, and
gardian in
Socage.

counts, and beside that offering to his ward conenable marriage without dispergement before the age of xxi. yeres if it be a man, of xiiii. if it be a woman. If the ward refuse to take that marriage, he or she must pay the value of the marriage, which is commonly rated according to the profite of his landes. All this while I speake of that which is called in French garde noble, that is of such as holde lands of other, by knight service, for that is an other kinde of service which we call in French garde roturier, we call it gard in socage, that is of such as doe not holde by knight service, but by tenure of the plough. This wardship falleth to him who is next of the kinne, and cannot inherite the land of the warde as the vncle by the mothers side, if the land doe discend by the father and of the fathers side, if the lande discend by the mother. This gardian is accountable for the reuenues and profitcs of the land, as the tutor by the ciuill Lawe to the warde or pupill so soone as he is of full age.

The man is not out of wardshippe by our lawe till xxi. yere olde, from thence he is reckoned of full age, as well as in the Romane lawes at xxv. The woman at xiiii. is out of warde, for she may haue an husband able to doe knightes service say our booke. And because our wiues be in the power (as I shall tell you hereafter) of their husbands, it is no reason, she should be in two diuerse gardes.

Many men doe esteeme this wardship by knightes service very vnrasonable and vniust, and contrarie to nature, that a Freman and Gentleman should be bought and solde like an horse or an ore, and so change gardians as masters and lordes: at whose gouernement not onely his bodie but his landes and his houses should be, to be wasted and spent without accounts, and then to marie at the will of him, who is his naturall Lord, or his will who hath bought him, to such as he

he like not peradventure, or else to pay so great a ransom. This is the occasion they say, why many gentlemen be so euil brought by touching vertue and learning, and but onely in deintinesse and pleasure; and why they be married very young and befoze they bee wise, and many times do not greatly loue their wiues. For when the father is dead, who hath the naturall care of his childe, not the mother, nor the vncle, nor the next of kinne, who by all reason would haue most naturall care to the bringing vp of the infant and *minor*, but the Lorde of whom he holdeth his land in knights seruice, be it the King or Duene, Duke, Marquesse, or any other, hath the gouernement of his bodie and marriage, or else who that bought him at the first, second or thirde hande. The Prince as hauing so many, must needs giue or sell his wardes away to other, and so he doeth. Other doe but seeke which way they may make most aduantage of him, as of an ore or other beast. These all (say they,) haue no naturall care of the infant, but of their owne gaine, and especially the buyer will not suffer his warde to take any great paines, either in studie, or any other hardenesse, leaſt he should be sicke and die, befoze he hath married his daughter, sister or cousin, for whose sake he bought him: and then all his money which he paid for him should be lost. So he, who had a father, which kept a good house, and had all things in order to maintaine it, shall come to his owne, after he is out of wardshippe, woods decayed, houses fallen downe, stocks wasted and gone, land let forth and plowed to the baren, and to make amends, shall pay yet one yeres rent for reliefe and sue ouster le maind, beside other charges, so that not of manie yeres and peradventure neuer he shall be able to reconer, and come to the estate where his father left it. This as it is thought was first graunted vpon a great extremitie to King Henrie the 3. for a time

But the Lorde
shalbe puni-
shed for the
waſt, by losse
of the ward: or
treble dam-
mages, if that
suffice nor.

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vpon

upon the warre which he had with his Barons, and af-
 terward increased, and multiplied to moze and moze
 persons and grievances, and will be the decay of the
 nobilitie and libertie of England. Other againe say,
 the ward hath no wrong. For eyther his father pur-
 chased the lande, or it did discend vnto him from his
 auncesters with this charge. And because he holdeth
 by knightes seruice, which is in armes and defence,
 seeing that by age he cannot doe that whereto hee is
 bound by his lande, it is reason he aunswere that pro-
 fite to the Lord, whereby he may haue as able a man
 to doe the seruice. The first knights in Rome, those
 that were chosen *equites Romani*, had *equum publicum*
 on which they serued, and that was at the charge of
 widowes and wards, as appeareth by Titus Liuius,
 because that those persons could not doe bodilie ser-
 uice to the common wealth. Wherfoze this is no newe
 thing, but thought reasonable in that most wise com-
 mon wealth, and to the prudent King Seruius Tullius.
 As for the education of our common wealth, it was at
 the first militaire, and almost in all things the scope
 and desaigne thereof is militaire. Yet was it thought
 most like, that noble men, good knights, and great
 captaines would bring by their wards in their owne
 seates and vertues, and then mary them into like rase
 and stocke where they may finde and make friends,
 who can better looke to the education or better skill of
 of the bringing by of a gentleman, than he who for his
 higher nobilitie hath such a one to holde of him by
 knights seruice, or would doe it better than he that lo-
 keth or may claime such seruice of his ward, when age
 and yeres will make him able to doe it. What which
 is saide that this maner of wardship began in the time
 of King Henrie the 3. cannot seeme true. For in
 Poymandie and other places of Fraunce the same
 order is.

And

And that statute made in King Henrie the thirde time touching wards, to him that will wey it wel, may seme rather a qualification of that matter, and an argument that the fashion of wardship was long before: but of this matter an other time shall be moze convenient to dispute. This may suffice to declare the manner of it.

Of Viues and mariages.

CHAP. 6.

THe viues in Englande be as I saide in *poteſtate maritorum*, not that the husbände hath *vita ac necis poteſtatem*, as the Romans had in the olde time of their childzen, for that is onely in the power of the Prince, and his lawes, as I haue saide before, but that what soeuer they haue before marriage, as soone as marriage is solemnished is their husbandes, I meane of money, plate, iuelles, cattaille, and generally all moneables. For as for lande and heritage followeth the succession, and is ordered by the lawe as I shall say hereafter: and what soeuer they gette after marriage, they get to their husbandes. They neither can giue nor sell anie thing either of their husbandes, or their owne. There is no moneable thing is by the law of England *constant matrimonio*, but as *peculium serui aut filijfamilias*: and yet in moneables at the death of her husbände she can claime nothing, but according as hee shall will by his Testament, no moze than his sonne can: all the rest is in the disposition of the executozs if he die testate. Yet in London and other great cities they haue that lawe and custome, that when a man dieth, his goods be diuided into thre partes. One thirde is imployed vppon the buriall and the bequestes which the testator maketh in his testament. An other thirde part the wife

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bath

bath as her right, and the thirde third part is the betwe and right of his childe, equally to be diuided among them. So that a man there can make testament but of one thirde of his goods: if he die intestate, the funerals deducted the goods be equally diuided betwene the wife and the childe.

By the common lawe of Englande if a man die intestate, the Ordinarie (which is the Bishoppe by common intendment) sometimes the Archdeacon, Dean, or Prebendarie by prouidence and prescription, doeth commit the administration of the goods to the widow or the child, or next kinsman of the dead, appointing out portions to such as naturally it belongeth unto, and the Ordinarie by common vnderstanding bath such grantie and discretion as shalbe mete for so absolute an authoritie for the most part, following such diuision as is vsed in London, either by thirde or halfe. Our forefathers newly conuerted to the Christian faith had such confidence in their pastors & instructours, and toke them to be men of such conscience that they committed that matter to their discretion, and belike at the first they were such as would sake no private profit to themselves thereby, that being once so ordeined bath still so continued. The abuse which bath followed was in part redressed by certaine actes of parliament made in the time of king Henrie the eight, touching the probate of testaments committing of administration & mortuaries. But to turne to the matter which we now haue in hande, the wife is so much in the power of her husband, that not onely her goods by marriage are freight made her husbandes, and she loseth all her administration which she had of them: but also where all English men haue name and surname, as the Romans had, Marcus Tullius, Caius Pompeius, Caius Iulius, whereof the name is giuen to vs at the font, the surname is the name of the gentilitie and

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Stocke which the sonne doth take of the father allwaies, as the olde Romans did, our daughters so sone as they be married lose the surname of their father, and of the family and stocke whereof they doe come, and take the surname of their husbands, as transplanted from their family into an other. So that if my wife was called before Philippe Wilford by her owne name and her fathers surname, as sone as she is married to me she is no more called Philippe Wylford, but Philippe Smith, and so must she write and signe: and as she chaungeth husbandes, so she chaungeth surnames, called allwaies by the surname of her last husbande. Yet if a woman once marrie a Lorde or a Knight by which occasion she is called my Ladie with the surname of her husbande, if he die and she take a husbande of a meaner estate by whom she shall not be called Ladie (such is the honour we doe giue to women) she shall still be called Ladie with the surname of her first husbande and not of the seconde.

She is no Ladie by the law although so called of course.

I thinke among the olde Romans those marriages which were made *per coemptionem in manum* and *per as* and *libram* made the wife *in manu & potestate viri*, where of also we had in our olde lawe and ceremonies of marriage, a certaine memorie as a *dictio* and *vestitum*. For the woman at the Church doze was given of the father or some other man next of her kinne into the handes of the husbande, and he layde downe golde and silver for her upon the booke, as though he did buy her, the priest belike was in Steele of Eupripeus: our marriages be esteemed perfect by the law of England, when they be solemnished in the Church or Chappell, in the presence of the priest and other witnesses. And this only maketh both the husbande and the wife capable of all the benefites which our lawe doth giue vnto them and their lawefull childe. In so much that if I marrie the widowe of one lately dead, which at the time

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of

of her husbandes death was with childe, if the childe be bozne after mariage solemnished with me, this childe shalbe my heire, and is accounted my lawefull sonne, not his whose childe it is in dæde, so p̄ciseely wee doe take the letter where it is saide, *pater est quem nuptia demonstrant*. Those waies and meanes which Iustinian doth declare to make bastardes to be lawefull children, muliers or rather melieurs (for such a terme our lawe vseth for them which be lawefull children) be of no effect in England, neither the Pope nor Emperour, nor the Prince himselfe neuer could there legitimate a bastarde to enioy any benefitte of our lawe, the Parliament hath onely that power.

Although the wife be (as I haue written befoze) in *manu & potestate mariti*, by our lawe yet they be not kept so streit as in meue and with a garde as they be in Italy and Spaine, but haue almost as much libertie as in Fraunce, and they haue for the most part all the charge of the house and houthoulde (as it may appeare by Aristotle and Plato the wiues of the Grækes had in their time) which is in dæde the naturall occupation, exercise, office and part of a wife. The husband to meddle with the defence either by lawe or force, and with all forren matters which is the naturall part and office of the man, as I haue written befoze. And although our lawe may seeme somewhat rigorous towards the wiues, yet for the most part they can handle their husbandes so well and so doncelly and specially when their husbands be sicke: that where the lawe giueth them nothing, their husbandes at their death of their god will giue them all. And fewe there be that be not made at the death of their husbandes either sole or chiefe executrices of his last will and testament, and haue for the most part the gouernement of the children and their portions: except it be in London, where a peculiar order is taken by the citie much after the fashion

tion of the ciuill lawe.

All this while I haue spoken onely of moueable goods : if the wife be an enberetrix & bring lande with her to the mariage, that lande descendeth to her eldest sonne, or is diuided among her daughters. Also the manner is, that the lande which the wife bringeth to the mariage or purchaseth afterwarde, the husbände can not sell nor alienate the same, no not with her consent, nor she her selfe during the mariage, except that she be sole examined by a Iudge at the common lawe: and if he haue no childe by her and she die, the lande goeth to her next heires at the common lawe : but if in the mariage he haue a childe by her, which is heard once to crie, whether the childe liue or die, the husband shall haue the vsufruite of her landes, that is the profitte of them during his life, and that is called the cour- tise of Englande.

It is auoidable after the husbandes death, except it be for xxj. yeares or three liues according to the statute, or except they leuie a fine.

Likewise if the husbände haue any lande either by inheritance descended or purchased and bought, if hee die before the wife, she shall haue the vsufruite of one thirde part of his landes. What is, she shall holde the one thirde part of his landes during her life as her dowrie, whether he hath childe by her or no. If he hath any children, the rest descendeth straight to the eldest: if he hath none, to the next heire at the common lawe: and if she mislike the diuision she, shall aske to be indow- ed of the fairest of his landes to the thirde part.

She shall be en- dowed at y^e dis- cretion of the sherife, except in few cases.

This which I haue written touching mariage and the right in moueables and vnmoueables which com- meth thereby, is to be vnderstood by the common law when no priuate contract is moze particularly made. If there be any priuate pacts, couenants, and contracts made before the mariage betwixt the husbände and the wife, by themselves, by their parents, or their friends, those haue force and be kept according to the firmitie and strength in which they are made. And this is y-
 enough

nough of wiues and mariage.

Of Children.

CHAP. 7.

Our children be not in *potestate parentum*, as the children of the Romans were: but as soon as they be *puberes*, which we call the age of discretion, before that time nature doth tell they be but as it were *partes parentum*. That which is theirs they may give or sell, & purchase to themselves either landes and other monies, the father hauing nothing to doe therewith. And therefore *emancipatio* is cleane superfluous, we knowe not what it is. Likewise *sui heredes* complaints, *de inofficioso testamento* or *præteritorum liberorum non emancipatorum* haue no effect nor vse in our lawes, nor wee haue no manner to make lawefull children but by mariage, and therefore we knowe not what is *adoptio* nor *arrogatio*. The testator disposeth in his last will his moueable goods freely as he thinketh meete and conuenient without controulement of wife or children. And our testaments for goods moueable be not subiect to the ceremonies of the ciuill lawe, but made with all libertie and freedom, and *iure militari*. Of landes as ye haue vnderstande before, there is difference: for when the owner dieth, his lande descendeth onely to his eldest sonne, all the rest both sonnes & daughters haue nothing by the common lawe, but must serue their eldest brother if they will, or make what other shift they can to liue: except that the father in life time doe make some conueiance and estates of part of his land to their vse, or els by devise, which word amongst our lawyers doth betoken a testament written, sealed and delineated in the life time of the testator before witnesses: for without those ceremonies a bequest of landes is not available.

available. But by the common lawe it hee that dieth hath no sonnes but daughters, the lande is equally diuided among them, which portion is made by agreement or by lotte. Although as I haue saide ordinarily and by the common lawe, the eldest sonne inheriteth all the lands, yet in some countries all the sonnes haue equall portion, and that is called gavelkinde, and is in many places in Kent. In some places the youngest is sole heire: and in some places after an other fashion. But these being but particular customes of certaine places and out of the rule of the common law, doe little appertain to the disputation of the policie of the whole Realme, and may be infinite. The common wealth is iudged by that which is most ordinarily and commonly done through the whole Realme.

Of Bondage and Bondmen.

CHAP. 8.

After that we haue spoken of all the sortes of freemen according to the diuersitie of their estates and persons, it resteth to say somewhat of bondmen which were called *serui*, which kinde of people & the disposition of them and about them doth occupie the most part of Iustinians Digestes, and Code. The Romans had two kinds of bondmen, the one which were called *serui*, and they were either which were bought for money, taken in warre, left by succession, or purchased by other kinde and lawefull acquisition, or else borne of their bonde women and called *verna*: all those kinde of bondmen be called in our lawe villens in grosse, as ye would say immediatly bonde to the person and his heires. An other they had as appeareth in Iustinians time, which they called *adscripticij glebae* or *agri censiti*. These were not bonde to the person, but to the mannor.

or place, and did followe him who had the manors, & in our lawe are called villaines regardants, for because they be as members, or belonging to the manor or place. Neither of the one sort nor of the other haue we any number in England. And of the first I neuer knewe any in the realme in my tyme: of the seconde fewe there be, that it is not almost worth the speaking. But our lawe doth acknowledge them in both those sortes. Manumission of all kinde of villaines or bondmen in Englanbe is vsed and done after diuerse sortes, and by other and moze light and easie meanes than is prescribed in the ciuil lawe, and being once manumitted, he is not *libertus manumittentis*, but simply *liber*: howbeit sith our Realme hath receiued the Christian religion which maketh vs all in Christ brethren, and in respect of God and Christ *conseruos*, men began to haue conscience to hold in captiuitie, and such extreme bondage him whome they must acknowledge to be his brother, and as we vse to terme him Christian, that is who looketh in Christ and by Christ to haue equall portion with them in the Gospel and saluation. Upon this scruple, in continuance of tyme, and by long succession, the holie fathers, Monkes and Friars in their confession, and specially in their extreme & deadly sicknesses, burdened the consciences of them whom they had vnder their hands: so that tempoꝝall men by little and litle by reason of that terroꝝ in their conscience, were glad to manumit all their villaines: but the said holie fathers, with the Abbots and Bishops, did not in like sort by theirs, for they had also conscience to impouerish and dispoyle the Churches so much as to manumit such as were bond to their Churches, or to the manors which the Church had gotten, and so kept theirs still. The same did the Bishoppes also till at the last and now of late some Bishoppes to make a peece of money manumitted theirs partly for argent, partly for

flann.

slaunders, that they seemed more cruell than the tempo-
raltie: after the monasteries comming into tempoꝝ all
mens handes haue bene occasion that now they be al-
most all manumitted. The most part of bondmen
when they were, yet were not vsed with vs so cruelly
noꝝ in that sort as the bondmen at the Romane ciuill
law, as appeareth by their Comedies, noꝝ as in Grece
as appeareth by theirs: but they were suffered to en-
ioy coppieholde lande to gaine and get as other serues
that now and then their Lordes might fleese them and
take a peece of money of them, as in France the Lordes
doe taile them whom they call their subiectes at their
pleasure, and cause them to pay such summes of money
as they list to put vpon them. I thinke both in France
and England the chaunge of religion to a more gentle,
humane and more equall sort (as the chꝛistian religi-
on as in respectes of the Gentiles) caused this olde
kinde of seruil servitude and slaerie to be brought in-
to that moderation, foꝝ necessitie first to villaines re-
gardants, and after to seruitude of landes and tenures,
and by litle and litle finding out more ciuill and gen-
tle meanes and more equall to haue that done which in
time of heathenesse seruitude oꝝ bondage did, they al-
most extinguisht the whole. Foꝝ although all persons
chꝛistians be bꝛethꝛen by baptisme in Iesu Chꝛist, and
therefoꝝe may appeare equally free: yet some were
and still might be chꝛistianed being bond and serue, and
whom as the baptisme did find so it did leaue them, foꝝ
it chaungeth not ciuill lawes noꝝ compactes amongst
men which be not contrarie to Gods lawes, but rather
maintaineth them by obedience. Which seeing men of
good conscience hauing that scruple whereof I wrote
befoꝝe, haue by litle and litle found meanes to haue and
obtaine the profit of seruitude and bondage which gen-
tilitie did vse and is vsed to this day amongst Chꝛisti-
ans on the one part, and Turkes and Gentils on the

other part, whē warre is betwixt them vpon those whō they take in battaile. Turkes and Gentiles I call them, which vsing not our lawe the one belæueth in one God, the other in many gods, of whom they make Images. For the lawe of Iewes is well ynough knowne, & at this day so farre as I can learne, amongst all people Iewes be holden as it were in a common seruitude, and haue no rule noz dominion as their owne prophetes doe tell that they should not haue after that Christ was promised to them, was of them refused for when they would not acknowledge him obstinately for, saking their helpe in soule for the life to come and honour in this worlde for the time present not taking the good tidinges, newes, and euangill brought to them for their disobedience by the great grace of God, and by the promise of the Prophets Iustificed in vs which be Gentils and brought forth this humanitie, gentleness, honour and godly knowledge which is seene at this present. But to returne to the purpose.

This perswasio I say of Christians not to make noz kepe his brother in Christ, seruite, bond and vnderling for euer vnto him, as a beast rather than as a man, and the humanitie which the Christian religion doth teache, hath engendered through Realme not nere to Turkes and Barbarians, a doubt, a conscience and scruple to haue seruants and bondmen: yet necessitie on both sides, of the one to haue helpe, on the other to haue service, hath kept a figure or fashion thereof. So that some would not haue bondmen, but *ascripcij gleba*, and villaines regardant to the ground, to the intent their service might be furnished, and that the countrie being euill, vnwholsome, and otherwise barren, should not be desolate. Others afterwarde found out the wayes and meanes, that not the men but the land should be bound and bying with it such bondage and service to him that occupieth it, as to ca-
rie

rie the Lordes dung vnto the fieldes, to plough his
 ground at certaine daies, solve, reape, come to his
 Court, sweare faith vnto him, and in the ende to holde
 the lande but by copie of the Lordes court rolle, and at
 the will of the Lord. This tenure is called also in our
 lawe, villaine, bonde, or seruile tenure: yet to consider
 moze deepely all lande, euen that which is called most
 free lande, hath a bondage annexed vnto it, not as na-
 turally the lower ground, must suffer and receiue the
 water and filth which falleth from the higher ground,
 nor such as Iustinian speaketh of *de seruitudinibus predi-
 orum rusticorum & urbanorum*, but the lande doeth
 bring a certaine kind of seruitude to the possessor. For
 no man holdeth land simply free in Englande, but he or
 she that holdeth the Crowne of Englande: all others
 holde their land in fee, that is vpon a faith or trust, and
 some seruice to be done to an other Lord of a mannor
 as his superior, and he againe of an higher Lord, till
 it come to the Prince & him that holdeth the Crowne.
 So that if a man die, and it be found that he hath land
 which he holdeth, but of whom no man can tell, this
 is vnderstande to be holden of the Crowne, and in capi-
 tie, which is much like to knights seruice, and draw-
 eth vnto it thre seruices, homage, ward and marriage:
 What is, he shall sweare to be his man, and to be true
 vnto him of whom he holdeth the lande. His sonne
 who holdeth the land after the death of his father, shall
 be married where it pleaseth the Lord. He that hol-
 deth the lande most freely of a tempozall man (for
 franke almose and franke marriage hath an other cause
 and nature) holdeth by fealtie onely, which is, he shall
 sweare to be true to the Lord, and doe such seruice as
 appertaineth for the land which he holdeth of the Lord.
 So that all free lande in Englande is holden in fee or
feodo, which is almuch to say as in *side* or *fiducia*: What
 is, in trust and confidence, that he shall be true to the

¶ iiii.

Lorde

Litleton did
not interpret
the word *feodum*
simply, but ra-
ther define or
describe the
nature thereof.

Litleton scene
in the tongues
as Sir Tho-
mas Smith
was in Litle-
ton.

Lozde of whom he holdeth it, pay such rents, doe such
seruice, and obserue such conditions as was annered
to the first donation. Thus all sauing the Prince be
not *viridomini*, but rather *fiduciarij domini*, & *possessores*.
This is a moze likely interpretation than that which
Litleton doeth put in his booke, who saith that *feodum*
idem est quod hereditas, which it doeth betoken in no
language. This hapneth many times to them who be
of great witte and learning, yet not sene in many
tongues, or marketh not the deduction of wordes
which time doth alter. *Fides* in Latine the Gothes com-
ming into Italie and corrupting the language, was
turned first into *fede*, and at this day in Italie they wil
say in *fide*, en *fede* or *ala fe*. And some vncunning Law-
yers that would make a newe barbarous latine worde
to betoken lande giuen in *fidem*, or as the Italian saith
in *fede*, or *fe*, made it in *feudum* or *feodum*. The nature
of the worde appeareth moze euident in those which
we call to self, *feof* or *feoffees*, the one be *fiduciarij posses-
sors*, or *fidei commissarij*, the other is, *dare in fiduciam*, or
fidei commissum, or moze latinely, *fidei committere*. The
same Litleton was as much deceiued in withernam, &
diuerse other olde wordes. This withernam he inter-
preteth *uetitum nauium*, in what language I knowe
not: whereas in trueth it is in plaine Dutche and in
our olde Saxen language, wyther *nempt*, *alterum ac-
cipere*, *iterum rapere*, a worde that betokeneth that
which in barbarous Latine is called *represalia*, when
one taking of me a distresse, which in Latine is called
pignus, or any other thing, and carying it away out of
the iurisdiction wherein I dwell, I take by order of
him that hath iurisdiction, an other of him againe or of
some other of that iurisdiction, and doe bying it into
the iurisdiction wherein I dwell, that by equal wrong
I may come to haue equall right. The manner of
represalia, and that we call withernam, is not altoge-
ther

ther one: But the nature of them both is as I haue described, and the proper signification of the words doe not much differ. But to returne thither where we did digresse: ye see that where the persons be free, and the bodies at full libertie and *maximè ingenui*, yet by annexing a condition to the lande, there is meanes to bring the owners and possessors thereof into a certaine seruitude or rather libertinitie: That the tenants beside paying the rent accustomed, shall owe to the Lord a certaine faith, dutie, trust, obedience, and (as we terme it) certaine seruice as *libertus*, or *cliens patrono*: which because it doeth not consist in the persons, for the respect in them doeth not make them bond, but in the lande and occupation thereof, it is more properly expressed in calling the one tenant, the other Lord of the see, than either *libertus* or *cliens* can doe the one, or *patronus* the other: for these words touche rather the persons, and the office and dutie betwene them, than the possessions. But in our case leauing the possession and lande, all the obligation of seruitude and seruice is gone.

An other kinde of seruitude or bondage is vsed in Englande for the necessitie thereof, which is called apprenticehode. But this is onely by couenaunt, and for a time, & during the time it is *vera seruitus*. For whatsoever the apprentice getteth of his owne labour, or of his masters occupation or stocke, he getteth to him whose apprentice he is, he must not lie smother of his masters doores, he must not occupie any stocke of his owne, nor mary without his masters licence, and he must doe all seruile offices about the house, and be obedient to all his masters commaundementes, and shall suffer such correction as his master shall thinke meete, and is at his masters cloathing and nourishing. his master being bounde onely to this which I haue saide, and to teache him his occupation, and for that he

serueth, some for vij. or viij. yeres, some ix. or x. yeres, as the masters and the friends of the young man shall thinke meete or can agree: altogether (as Polidore hath noted) *quasi pro emptio seruo*: neuerthelesse that neither was the cause of the name appzentice, neither yet doeth the woꝛde betoken that which Polydore supposeth, but it is a Frenche woꝛde, and betokeneth a learner or scholer. Apprendre in Frenche is to learne, and apprentise is as much to say in Frenche (of which tongue we borrowed this woꝛde and many more other) as *discipulus* in Latine: likewise he to whom he is bound, is not called his Loꝛde but his master, as ye would say his teacher. And the pactions agreed vpon, be put in wꝛiting, signed and sealed by the parties, and registred for more assurance: without being such an appzentice in London, and seruing out such a seruitude in the same Citie for the number of yeres agreed vpon, by order of the Citie amongst them, no man being neuer so much boꝛne in London, and of parentes londoners is admitted to be a Citizen or free man of London: the like is vsed in other great Cities of Englande. Besides appzentises, others be hired for wages, and be called seruaunts or seruing men and women throughout the whole Realme, which be not in such bondage as appzentises, but serue for the time for daily ministrie, as *serui* and *ancilla* did in the time of gentilitie, and be for other matters in libertie as full free men and women.

But all seruaunts, labourers and others not married, must serue by the yere: and if he be in couenaunt, he may not depart out of his seruice without his masters licence, and he must giue his master warning that he will depart one quarter of a yere before the terme of the yere expireth, or else he shalbe compelled to serue out an other yere. And if any young man bꝛemaried be without seruice, he shalbe compelled to get him a master

ster whom he must serue for that yere, or else he shalbe punished with stockes and whipping as an idle vagabond. And if any man married or vnmarried, not hauing rent or liuing sufficient to maintaine himselfe, doe liue so idely, he is enquired of, and sometime sent to the gaole, sometime otherwise punished as a sturdie vagabond: so much our policie doth abhorre idleness. This is one of the chiefe charges of the Iustices of peace in euerie Shire. It is taken for vngentlenesse and dishonour, and a shewe of enmitie, if any gentleman doe take an other gentlemans seruaut (although his master hath put him away) without some certificate from his master eyther by word or writing, that he hath discharged him of his seruice. What which is spoken of men seruants, the same is also spoken of women seruants. So that all youth that hath not sufficient reuenues to maintaine it selfe, must needs with vs serue, and that after an order as I haue written. Thus necessity & want of bondmen hath made men to vse freemen as bondmen to all seruile seruices: but yet moze liberally and freely, and with a moze equalitie and moderation, than in time of gentilitie slaues and bondemen were wont to be vsed, as I haue saide before. This first and latter fashion of tempoꝛall seruitude, and vpon paction is vsed in such countreyes, as haue left off the old accustomed maner of seruants, slaues, bondemen and bondwomen, which was in vse before they had receiued the Chyistian faith. Some after one sort, and some either moze or lesse rigorously, according as the nature of the people is enclined, or hath denised amongest themselves for the necessity of seruice.

Q ij

Of

Of the Court which is Spirituall or Ecclesiasticall, and in the booke of Law, Court Christian, or *Curia Christianitatis*.

CHAP. 9.

The Archebishops and Bishops haue a certaine peculiar iurisdiction vnto them especially in foure maner of causes: Testamentes and legations, Wythes and moztuaries, marriage and adulterie oꝝ fornication, and also of such things as appertaine to oꝝders amongest themselues and matters concerning religion. For as it doeth appeare, our auncestoꝝs hauing the common wealth befoze oꝝdeined & set in frame, when they did agree to receiue the true and Christian religion, that which was established befoze, and concerned externe policie (which their Apostles, Doctoꝝs and Preachers did allowe) they helde and kept still with that which they brought in of newe. And those things in keeping whersof they made conscience, they committed to them to be oꝝdered and gouerned as such things, as of which they had no skill, as to men in whom foꝝ the holinesse of their life and good conscience, they had a great and sure confidence. So those matters be oꝝdered in their Courts, and after the fashon and maner of the lawe ciuil oꝝ rather common by citation, libel, *contestationem litis*, examination of witnesses priuillie, by exceptions, replications apart and in wꝛiting, allegations, matters by sentences giuen in wꝛiting, by appellations from one to an other as well *a grauamine* as *a sententia definitiua*, and so they haue oꝝther names, as Doctoꝝ, Advocates, Assessors, Ordinaries, and Commissaries, &c. farre from the manner of our oꝝder in the common lawe of Englande, and from that fashon which I haue shewed you befoze. Wherefoꝝe

soze if I say the testament is false and forged, I must sue in the spirituall lawe, so also if I demaunde a legacie: but if I sue the executoz or administratoz (which is he in our lawe, who is in the ciuill lawe *heres* or *bonorū mobilium possessor ab intestato*) for a debt which the dead ought me, I must sue in the tempozall court. These two courtes the tempozall and the spirituall be so diuided, that who so querieth for any thing to Rome or in any spirituall court for that cause or action which may be pleaded in the tempozall court of the Realme, by an olde lawe of Englande hee falleth into a *premunire*, that is hee forfeiteth all his goods to the Prince, and his body to remaine in prison during the Princes pleasure: and not that onely, but the Judge, the scribe, the procurer and assessoz which receiueth and both maintaine that vsurped pleading doth incur the same daunger. Whether the word *premunire* doeth betoken that the authoritie & iurisdiction of the realme is prouided for before and defended by that lawe, and therefore it hath that name *premunire* or *pramuniri*, or because that by that lawe such an attempture hath had warning giuen before to him of the daunger into which he falleth by such attempt, and then *premunire* is barbarously witten for *pramonere*, *pramoneri*, (as some men haue helde opinion) I will not define, the effect is as I haue declared: and the lawe was first made in king Richarde the secondes time, and is the remedie which is vled when the spirituall iurisdiction will goe about to encroch any thing vpon the tempozall courts. Because this court or soyme which is called *curia christianitatis*, is yet taken as appeareth for an externe and forren court, and differreth from the policie and manner of government of the Realme, and is an other court (as appeareth by the act and writ of *premunire*) than *curia regis aut regina*. Yet at this present this court as well as others hath her force, power, authoritie,

Which ought to be tried in the temporall court.

Premunire writ

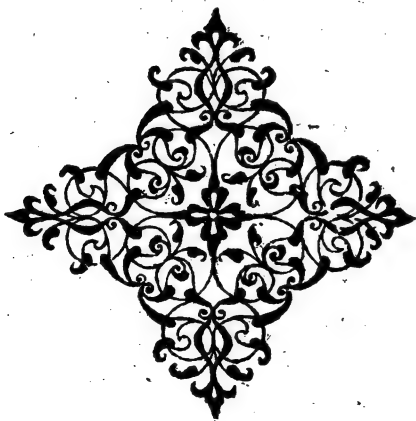
rule and iurisdiction, from the royall maiestie and the crowne of England & from no other forren potentate or power vnder God (which being granted, as indeede it is true) it may nowe appeare by some reason that the first statute of *præmunie* whereof I haue spoken, hath nowe no place in Englande, seeing there is no pleading *alibi quam in curia regis ac regina*.

I haue declared summarily as it were in a chart or mappe, or as Aristotle termeth it, *oikonomia* the forme and manner of the gouernement of Englande, and the policie thereof, and sette before your eyes the principall pointes wherein it doth differ from the policie or gouernment at this time vsed in Fraunce, Italie, Spaine, Germanie and all other countries, which doe followe the ciuill lawe of the Romanes compiled by Iustinian into his pandects and code: not in that sort as Plato made his common wealth, or Xenophon his kingdom of Persia, nor as Syr Thomas More his *Utopia* being feigned common wealths such as neuer was nor neuer shall be, vaine imaginations, phantasies of Philosophers to occupie the time and to exercise their wittes: but so as Englande standeth and is gouerned at this day the xxviii of March Anno 1565. in the vij yeare of the raigne and administration thereof by the most vertuous and noble Quene Elizabeth, daughter to King Henrie the eight, and in the one & fiftieth yeere of mine age, when I was ambassadoe for her maiestie in the court of Fraunce, the scepter whereof at that time the noble Prince and of great hope Charles Maximilian did holde, hauing then raigned iiii yeares. So that whether I writ true or not, it is easie to be seene with eyes (as a man would say) and felt with handes. Wherefore this being as a picture or table of a common wealth truly laide before you, not fained by putting a case: let vs compare it with common wealthes, which be at this day in esse, or doe remaine described in true histories,

hiftozies, especially in fuch pointes wherein the one dif-
fereth from the other, to ſa^e who hath taken the righter,
truer, and moze commodious way to gouerne the peo-
ple as well in warre as in peace. This will be no illibe-
rall occupation fo^r him that is a Philoſopher and
hath a delight in diſputing, no^r vnprofitable
fo^r him who hath to do & hath good will
to ſerue the Prince and the com-
mon wealth in giuing coun-
ſell fo^r the better admi-
niſtration thereof.

Thomas Smyth.

FINIS.





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